

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 UNITED STATES OF AMERICA,) 2:10-CR-1104
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7 Plaintiff) Charleston,
8) South Carolina
9) September 13, 2012
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8 TRANSCRIPT OF SENTENCING HEARING
9 BEFORE THE HONORABLE RICHARD M. GERGEL,
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Plaintiff: MR. PETER PHILLIPS
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22 Proceedings recorded by mechanical shorthand,
23 Transcript produced by computer-aided transcription.

1 THE COURT: Mr. Phillips, are you ready to call your
2 next case, sir?

3 MR. PHILLIPS: Yes, sir. Yes, Your Honor. This is
4 *United States of America vs. Marcus Gibbs.* This is Criminal
5 Number 2:10-1104. We are here for sentencing. And I know we
6 have multiple issues that have arisen in the last 24 hours,
7 and I think the first one would be Mr. Condon's request for
8 continuance. I'll let him speak on that matter.

9 THE COURT: Glad to hear from you, Mr. Condon. Good
10 morning, sir.

11 MR. CONDON: Good morning, Your Honor.

12 In order to make sure that I have done everything I
13 possibly can for Marcus, one of the issues that came up is
14 that the mandatory minimum I think should be 10 years as
15 opposed to 20 years. He pled to a criminal conspiracy and
16 the Indictment makes no reference to any type of drugs, and
17 it was strictly a state criminal conspiracy charge. And so I
18 think the mandatory minimum issue, it makes a big difference
19 in this case in terms of the understanding or the parameters
20 with regard to sentencing.

21 And then the second issue is the family has hired
22 Mr. Cohen, who is a local detective, and they have asked --
23 and they have just scraped up that money for him to do that
24 to look into various issues. And I would like, you know,
25 Mr. Cohen to address the Court on what he's doing and the

1 reason why it's important for them to do it. I just want to
2 be able to make sure that I have done everything I can on
3 behalf of my client with regard to this case.

4 THE COURT: Well, I commend you for that. Let's
5 first of all address this 851 issue.

6 Mr. Phillips?

7 MR. PHILLIPS: Yes, sir. The -- we believe --
8 well, obviously I didn't have -- at some point when we
9 determined -- I'll go back in time. When we filed the
10 enhancement, we got the documents. And at some point, I
11 believe, I can't -- this case has a lot of documents and we
12 have been through a lot of things -- but what's clear from
13 the documents and from the sentencing sheet is that he pled
14 to a conspiracy under the Controlled Substances Act. So that
15 would be our first point. And we are making efforts right
16 now in case it became an issue to get information, the
17 underlying information, which I probably have in my file
18 somewhere, regarding the incident report.

19 But the determination was made before we filed the
20 enhancement that, first of all, he pled under the Controlled
21 Substances Act, so it was essentially an 846, so it was a
22 drug offense felony drug offense. And that the incident did,
23 in fact, because of that -- and I believe we had some
24 incident reports -- involved drugs. And that would -- again,
25 that's just my recollection, and I'm trying to get the

1 incident report so we'll know.

2 But so I think legally that we went on that issue.

3 That doesn't affect, you know, his ability to -- unless it's
4 been filed for a long time, he hasn't filed a written
5 objection if his 851 applies.

6 And the other issue is this, that there is an
7 assumption -- and that's actually since I heard Mr. Condon
8 last night -- one of the things I have been looking into is
9 this assumption that we are limited to the Indictment in
10 determining whether it's a felony drug offense, and certainly
11 that's under the categorical approach, when you are
12 determining a career offender under the Guidelines, an armed
13 career criminal, that can be the case. But when you read
14 851, it talks about -- it talks about other -- it talks about
15 the record of the defendant and other facts to be relied upon
16 by the Government. So -- and I can't find a case -- and
17 granted, I didn't have a lot of time to look, but I can't
18 find a case that says you are limited to the Indictment
19 itself when determining whether it was a felony drug offense,
20 because we've got to determine what the potential penalty
21 was, which no problem there, and then we've got to determine
22 that it involved drugs.

23 And so my position at this time, given my limited
24 research on the issue, is that it's just an assumption that's
25 always been made, that you can't look outside of the

1 Indictment itself to determine if it's a felony drug offense.

2 With that being aside, we have the sentencing sheet
3 having it under the Controlled Substance Act.

4 Now, as far as the continuance is concerned, that's
5 sort of a different issue. And in our estimation, the only
6 change that makes is in the floor of the sentence. It
7 doesn't change the mandatory minimum, the maximum, it doesn't
8 change the max, it only changes the mandatory minimum. It
9 doesn't affect the Guidelines. I don't think anywhere in the
10 Presentence Report that any Guideline is generated or
11 affected by the mandatory minimum. That's a statutory issue
12 wholly irrelevant, or wholly separate from the Sentencing
13 Guidelines.

14 So that's the difference. So really the only skin
15 in the game from the Government's perspective is the floor of
16 the sentence that you may -- you know, the range that you
17 have to sentence him which is life, either down to 20 or 10.

18 So I --

19 THE COURT: Let me tell you, Mr. Phillips --

20 MR. PHILLIPS: I'm not going to concede the issue.

21 THE COURT: I'm not sure it matters. I've got to
22 tell you, what concerns me is when I look at the Indictment,
23 he's -- Mr. Gibbs was indicted under common law conspiracy,
24 16-17-410, and it's called Indictment for Criminal
25 Conspiracy. On the plea sheet it references a different

1 statutory section, 44-53-370, which is the drug conspiracy
2 statute but it refers to it as criminal conspiracy.

3 MR. PHILLIPS: Yes, sir.

4 THE COURT: And that just seems ambiguous to me.
5 There is sort of an ambiguity in the documents, and I think
6 it's much ado about nothing frankly.

7 MR. PHILLIPS: And that was my point.

8 THE COURT: And I'm kind of -- you know, obviously
9 the mandatory minimums, which no District Judge is crazy
10 about, um, tells us our floor, our ceiling or whatever. And
11 I note them, but I don't drive -- that doesn't drive my
12 sentences. My sentencing is based on what is sufficient and
13 not greater than necessary to accomplish the purposes of the
14 act. And the only way it affects me is if I reach a number
15 and then it's somehow outside of the mandatory
16 maximum/minimum then it limits me on what I can do.

17 So it's -- to me it's not a big deal. And obviously
18 here we have a Guideline that is life at this point. We've
19 got objections we've got to take up and so forth, but we are
20 a long way from 10 years and a long way from 20 years,
21 frankly. And I want to hear all the arguments and if it
22 becomes more material, then that's something we need to
23 address.

24 But my own inclination I've got to say is I think on
25 the documents I have in front of me, there is at least some

1 ambiguity on this issue because it specifically -- that he
2 pled to something which refers to the very charge of the
3 Indictment, which is a common law crime, though it also
4 references on this document the drug conspiracy. It's just a
5 little ambiguous to me. And for something this weighty, I
6 would be -- you know, I would not -- I would not tend to want
7 to rely on something that's an ambiguous document.

8 MR. PHILLIPS: Yes, sir. And I was -- that is sort
9 of the point I was getting to is that while I don't want to
10 concede the issue, but I'm not -- I don't think we need to
11 delay it in order to -- I'll give up the 10 years, the 20
12 years.

13 THE COURT: I'm going to simply say on the document
14 that's in front of me, I'm not persuaded that the 851
15 enhancement is indicated. So I'm operating here today on the
16 assumption it's 10 to life.

17 MR. PHILLIPS: Then just for the record and for our
18 positions, we have other cases that -- we are not waiving any
19 arguments.

20 THE COURT: Nobody is waiving anything. I just --
21 I'm -- if it became something important, I'm glad to look at
22 other acceptable documents, but what I have, which is the --
23 let me just refer to Docket 507, which is the 851
24 enhancement, I have the Indictment, the -- I'm sorry, the --
25 you know, the sentencing sheet here, and I have the

1 Indictment.

2 MR. PHILLIPS: Yes, sir.

3 THE COURT: And those are the documents I've relied
4 upon. And I suppose we ought to make them part of the
5 record. Do you have those -- do we have extra copies of
6 those documents? Specifically the reference -- the guilty
7 plea signed by Mr. Gibbs, sentencing date of March 13th,
8 2000, and the Indictment for criminal conspiracy. Do we have
9 copies of that -- extra copies of those two documents?

10 MR. CONDON: Yes, sir, we do, and I've certified
11 them.

12 THE COURT: Let's mark those as an exhibit. I would
13 like to have them in the record. Let me just take a look and
14 see if we are talking about the same document, Mr. Condon.

15 MR. CONDON: Yes, sir.

16 THE COURT: We are going to mark this as Court
17 Exhibit 1, which is the -- which are those documents. And
18 I -- and Mr. Phillips, I just -- I'm -- for purposes of this,
19 I'm -- you know, I'm acting on the assumption the range is 10
20 to life.

21 MR. PHILLIPS: Yes, sir.

22 THE COURT: And I'm not definitively ruling on this,
23 but on the documents I have, and if it becomes important
24 later, I'm more than prepared to reconsider based on
25 additional documents the Government may have a chance to --

1 you know, I think we need to proceed with the sentencing.
2 We've postponed this several times. And so at this point I
3 think the defendant is entitled to the benefit of the doubt
4 on the ambiguity of these documents, and I'm operating on 10
5 to life is the range here.

6 MR. PHILLIPS: Yes, sir.

7 And then the second issue -- and as far as that
8 issue, we understand your ruling but he also wanted to
9 continue it because of the drug amount. And my position on
10 that, I want to know what they need more time on. They are
11 talking about pictures that Andy Savage had -- I mean, I
12 think if the Court's going to consider that, it's been almost
13 a year, I think we should know what these ambiguous -- what
14 these amorphous issues are that need to be investigated, and
15 you know, and we can address them. I mean, you know, I've
16 heard about these pictures. I continue to say that Andy
17 Savage only got the pictures because the Government gave them
18 to them. If they say there is a picture missing, the only
19 agents that have handled those, the discovery -- essentially,
20 and I would have to double-check, but either Andy Savage gave
21 him all the discovery and then we may -- or what usually
22 happens is we take the discovery that went to Mr. Savage and
23 send it to Mr. Condon, and that's what exactly went to Mr.
24 Savage. I can tell you that my office didn't go and take out
25 pictures. And I can talk to the agent and we can certainly

1 have him testify that he didn't take out pictures.

2 THE COURT: Let me slow you down here.

3 Mr. Gibbs's family has every right to retain people
4 to investigate anything, and I'm the first person if there is
5 any impropriety I want to know about it, okay? But I'm not
6 delaying this sentencing on the possibility that something
7 might be discovered. And I want to put on the record that
8 counsel and the Court had a telephone conference the other
9 day because I was -- I had received contact that several
10 jurors had been contacted by a detective on behalf of the
11 defendant. And, you know, they were frightened. The
12 detective had come to their home and made direct contact.
13 And I expressed my concern that I wanted to balance the right
14 of a defendant to investigate anything regarding his
15 conviction in a reasonable way, but we didn't need to be
16 scaring and intimidating jurors. And that the balance would
17 be, it would seem to me, would be reasonably met by the
18 detective writing a letter fully disclosing his affiliation,
19 and that the jurors have the right to not be obligated to
20 speak to him, and they could then contact him, and that sort
21 of feeling of intimidation would be lessened as a result.

22 So I -- you know, I say to the defendant and to
23 anyone who is on his behalf trying to find information, this
24 Court would be glad to entertain it and consider it at the
25 appropriate time, but I'm not going to delay sentencing today

1 on the basis of that.

2 So Mr. Condon, your motion to continue is denied and
3 I'm ready to proceed.

4 MR. CONDON: Your Honor, can I at least have Mr.
5 Cohen proffer what he is going to do?

6 THE COURT: I'm not sure why it affects sentencing.
7 There is a valid conviction, I need to proceed with
8 sentencing. Anything that the detective might find or could
9 find or is looking for is something I'm glad to consider at
10 the appropriate time. And it would -- you know, I just don't
11 know why we would be delaying that. We have delayed this
12 thing so many times, Mr. Condon. You tell me what he is -- I
13 want to -- I don't need to hear from him, tell me what you
14 are talking about specifically that would be relevant to the
15 sentencing.

16 MR. CONDON: Well, he -- I guess the overall basis
17 for Mr. Cohen is to make sure that everything is looked at
18 with regard to Marcus's case to make sure that there wasn't
19 any type of misconduct and there was fairness throughout the
20 system, that there wasn't any type of juror confusion, um, or
21 any type of undue pressure put on the jury so that they feel
22 that the system was absolutely fair to Mr. Gibbs. That's in
23 a nutshell overall. Mr. Cohen can go into detail about all
24 of that.

25 THE COURT: I'm -- based on what you have said, I

1 see no basis to continue sentencing.

2 Now, if in the -- you and I both know jury
3 deliberations aren't really supposed to be a matter of
4 discussion. If there is improper influence, contact,
5 etcetera, that's something that this Court would want to know
6 about immediately, and I don't begrudge the defendant from
7 doing all within his power to investigate any potential claim
8 he wishes to pursue.

9 But the -- this courthouse is open. If any
10 information is learned that is potentially relevant, I want
11 to hear about it, but nothing I've heard should affect the
12 decision of the Court to proceed with sentencing today and
13 I'm going to proceed today.

14 So your motion to continue is denied.

15 MR. CONDON: Yes, sir.

16 THE COURT: Okay. Now, let's swear the defendant,
17 Ms. Ravenel.

18 THE CLERK: Yes, sir.

19 Can you come to the podium, please. Place your left
20 hand on the Bible, raise your right.

21 THEREUPON:

22 MR. MARCUS GIBBS,

23 Called in these proceedings and after having been first duly
24 sworn testifies as follows:

25 THE COURT: Very good. Mr. Condon, I want to

1 confirm that you've had a chance to review the Presentence
2 Report?

3 MR. CONDON: Yes, sir.

4 THE COURT: And you've had a chance to consult and
5 review it with Mr. Gibbs?

6 MR. CONDON: Yes, sir.

7 THE COURT: Mr. Gibbs, you, sir, have had an
8 opportunity to review the Presentence Report, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And to consult with your attorney
11 regarding that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Very good. You can return to your seat
14 now.

15 THE COURT: Mr. Condon, are there objections by the
16 defendant to the Presentence Report?

17 MR. CONDON: Yes, sir. We had filed a litany of
18 objections.

19 THE COURT: Why don't you -- sometimes they come and
20 go as things go, so let's just walk through them because we
21 are going to go through them one by one and we are going to
22 take our time. We are in no rush here today.

23 MR. CONDON: The overall objection is that any
24 finding which increases the sentence we basically would
25 disagree with. That would be any drug amounts, any

1 information that increases his sentence, we would disagree
2 with. I outlined in that letter of March 23rd, 2012 all the
3 different objections.

4 THE COURT: Well, let me make sure we get them
5 because we need to go through them. You are saying all of
6 them in the letter. We are going to walk through them.

7 You object to the drug amounts.

8 MR. CONDON: Correct.

9 THE COURT: And I take it that includes using
10 information outside the specific period expressly referenced
11 in the Indictment, correct?

12 MR. CONDON: Yes, sir.

13 THE COURT: And you include the use of a dangerous
14 weapon, the two-point enhancement for that, right?

15 MR. CONDON: Yes, sir.

16 THE COURT: You object to the organizer/leader
17 finding, correct, enhancement?

18 MR. CONDON: Yes, sir.

19 THE COURT: You object to obstruction of justice,
20 correct?

21 MR. CONDON: Yes, sir.

22 THE COURT: Are there others?

23 MR. CONDON: I think the one with regard to the
24 place was weighed by probation.

25 THE COURT: Yes. And if you look at page 16 of the

1 Presentence Report, it begins on several pages going through
2 the enhancements.

3 MR. CONDON: Paragraph 75, the --

4 THE COURT: The dangerous weapon, we discussed that.

5 MR. CONDON: The role adjustment, 77.

6 THE COURT: We discussed that. The obstruction at
7 78, we discussed that.

8 Are there any others?

9 MR. CONDON: Well, I think what happens is that the
10 drug amount controls how the other counts are calculated and
11 so the money laundering --

12 THE COURT: Correct. I understand that. But you
13 are objecting to the 38 because of the drug weights, I
14 understand. We are going to get into that. I just want the
15 list so when we go through we make sure we are exhausted as
16 we address your objections.

17 Are there any others?

18 MR. CONDON: I think that covers it.

19 THE COURT: Very good. Okay. And let's do them one
20 by one because I want to be careful enough about that, I
21 understand your objection, and to hear whatever you've got to
22 say and to hear from the Government one by one.

23 So why don't we do -- initially let's do any
24 objections you have to the drug weight in the Presentence
25 Report which is found to be the marijuana equivalent of

1 103,392 kilograms. Any objections you have to drug weight,
2 what are they?

3 MR. CONDON: Well, I think that the overall is that
4 the people that testified were -- the Court has to base its
5 finding on reliable evidence.

6 THE COURT: I certainly do.

7 MR. CONDON: And the people that testified in this
8 case all had an incentive to mislead the Court with regard to
9 their testimony. They all were downward departures, all
10 looking for this time to be cut. And I think that -- and
11 also there is drug amounts that are outside the scope of the
12 conspiracy in the Indictment.

13 THE COURT: Anything else regarding drug weight?

14 MR. CONDON: I think that's the general ones that I
15 covered in this -- in my memo of March 23rd.

16 THE COURT: Okay. Mr. Phillips, I'll be glad to
17 hear the Government's view on the drug weight issue.

18 MR. PHILLIPS: Yes, Your Honor.

19 Well first, I believe the response by the probation
20 officer, you know, does an excellent job of dealing with that
21 objection.

22 And essentially, in reading the Sentencing
23 Memorandum, they want to limit the drug weight to what was
24 found in the truck that Mr. Gibbs was driving in the
25 Applebee's, if you recall, and they point to, well, these

1 other defendants are looking to have their time cut,
2 etcetera, and that they are therefore unreliable.

3 Well, as an initial matter, every drug case I've
4 tried in Federal Court, you have cooperating defendants, and
5 you know, whether they are reliable or not is made not by a
6 blanket assertion just because they are seeking their
7 sentence to be reduced, that they are lying. It's a
8 credibility assessment. The Court witnessed these
9 individuals testify, the jury saw them, and the manner, the
10 demeanor of testimony and what they testified to, and what
11 they testified to in context of the entire trial and the
12 evidence, the hard evidence that was presented, the physical
13 evidence.

14 And in assessing all of that in context, I
15 believe -- and I'll focus on three in particular were very
16 reliable, Timothy Maldonado, Pedro Ochoa -- actually four --
17 Sidney Waiters and Benjamin Jenkins. And I'll briefly -- I'm
18 not going to retry the case -- I'll cite some things in the
19 transcript to refresh the Court's recollection.

20 THE COURT: I've actually reread the entire
21 transcript.

22 MR. PHILLIPS: Yes, sir, and I figured you had. So
23 I can point you to -- and my focus is going to be Timothy
24 Maldonado and the physical evidence that shows he was
25 credible. In addition to his demeanor, in addition to the

1 circumstances, how he came in to testify in the case, which
2 I'll remind the Court -- and I may touch on the others -- but
3 it sort of -- it spreads out from Maldonado in my view of the
4 case.

5 And Mr. Maldonado, if you recall, is the nephew of
6 Nene or Lo, who at trial we presented the evidence that he
7 was Mr. Gibbs's primary source of supply from Mexico, and
8 he's an individual that we've noted in the Sentencing
9 Memorandum. And we know this not by just intelligence, but
10 we've had a cooperating defendant identify the Beltran Leyva
11 Cartel, which is associated with the Los Zetas Cartel, as the
12 association that Lo or Nene has. That's the cartel that he
13 is involved with, that he has been offered -- and I can tell
14 you this -- but he has been offered to move up in the
15 organization and refused because the guy on top of him every
16 time had either been killed or arrested, and these are folks
17 that you would hear about on CNN and the like. So he's a
18 significant drug trafficker and we established that at the
19 trial.

20 Then Mr. Maldonado was his nephew. And what
21 Mr. Maldonado testified to -- and I think this is really
22 critical and you can use this as a starting point for the
23 drug weight -- Mr. Maldonado per month on the average said
24 every two weeks --

25 THE COURT: Fourteen kilos every two weeks.

1 MR. PHILLIPS: Yes, sir.

2 THE COURT: Eighteen months.

3 MR. PHILLIPS: And he said -- and I said,
4 Approximately 28 per month? And he agreed. And I said.
5 That went on for 24 months --

6 THE COURT: He corrected you and said 18 months.

7 MR. PHILLIPS: He limited it to 18 months.

8 So when you take 18 months times 28, you get well
9 over 500 kilos.

10 THE COURT: I mean, that is, when you look at the
11 probation officer's report and the amount attributed to
12 Mr. Maldonado, it is the overwhelming, over 90 percent of the
13 drug weight at issue in this sentencing.

14 MR. PHILLIPS: Yes, sir.

15 THE COURT: It's all -- that's why I went back and
16 reread Mr. Maldonado all by himself because I realized the
17 significant impact it has.

18 And I will say just for the record -- of course I
19 tried this case, I found Mr. Maldonado's testimony very
20 credible.

21 MR. PHILLIPS: Yes, sir.

22 THE COURT: And as obviously did the jury.

23 MR. PHILLIPS: Yes, sir.

24 And there is -- and not only in his demeanor and the
25 way he testified, but there is physical evidence that

1 corroborated this number. And it's almost -- it's almost --
2 it's shocking in a way of how it's corroborated, how
3 strongly. And I've had a lot of cases in my time as a
4 prosecutor and I've not had a case like this where there was
5 so much evidence that fit together so well.

6 He says 14. I can tell the Court that Mr. Maldonado
7 never saw -- he wasn't part of this case, he never got the
8 discovery. Yeah, I can't say he never saw the discovery, he
9 was in Kentucky in the Bureau of Prisons, I don't have any --
10 we never gave him discovery, we never showed him discovery.
11 So I think it's safe to say that he didn't see the discovery.
12 And for him to say 14, it's -- the irony there is what does
13 the text message say from Mr. Gibbs's phone to Nene.

14 THE COURT: Fourteen girls.

15 MR. PHILLIPS: It orders 14 girls and there was
16 testimony that was cocaine.

17 So right there, with some testimony he's explaining
18 what girls were, there is corroboration, that this number
19 isn't something that he pulled out of thin air, that it's
20 consistent with what the physical evidence shows, the text
21 from Mr. Gibbs to Nene.

22 In addition, beyond that you have what was seized
23 from Woodbridge in Johns Island, and it's 12 kilos. Now,
24 it's not 14, but it's 12 kilos, a significant amount. It's
25 very close to 14. But in preparing for this -- and I don't

1 think I made this point at trial, but it's certainly, I could
2 have made it, I did talk a lot about the wrapping of the
3 kilos in the truck at Applebee's. I made a lot of argument
4 with the jury about the wrapping and comparing -- in
5 closing -- in comparing the wrapping of the kilos found in
6 Woodbridge and the wrapping of the kilos that were found in
7 the truck, and they were identical.

8 Now, I don't recall how many kilo wrappers were in
9 the truck, it was more than one. So if it was two, three,
10 four, that's a number that is almost identical or similar to.

11 THE COURT: It had been an ongoing trafficking
12 organization. It doesn't mean that Mr. Gibbs would exhaust
13 his entire supply before another one would show up. So the
14 fact that it is exactly 14 or less, slightly less, it seems
15 to me not a big moment to spend time with.

16 MR. PHILLIPS: Well, I'm just pointing out that
17 it's consistent, that corroborates Mr. Maldonado's
18 recollection of how much drugs he was getting. That he was
19 ordering up 14, approximately 14 every time, and then you
20 have physical evidence of the text message and you have
21 physical evidence of drugs seized and wrappers seized that
22 are all consistent. We are not talking about finding a kilo
23 at his house and that's it, and someone saying he's buying 30
24 kilos, we are talking about 14. And we are all in the same
25 universe. That's my point, that that corroborates

1 Mr. Maldonado.

2 And then from there, you know, his number, when you
3 hear Benjamin Jenkins, is very similar. And Mr. Jenkins was
4 a little earlier, but they were dealing with the same folks
5 and they were dealing with the same volume. He and Gators,
6 you may recall the testimony involving Gators, they are a
7 gang from Benjamin Jenkins and Mr. Gibbs. They were all sort
8 of starting out together with this Mexican source and going
9 to the same time.

10 So that -- again, Mr. Maldonado's testimony, the
11 physical evidence I think corroborates -- corroborates
12 Mr. Maldonado, as well. And again, he's credible, too, I
13 believe because, you know, the gun, Mr. Gibbs can't really
14 deny that he doesn't know who Mr. Maldonado is because he's
15 got a gun that is registered to his house. Mr. Maldonado
16 explained that. And Mr. Maldonado on top of that recognized
17 the phone number that was out in the safe.

18 THE COURT: Yeah. Let's just put on the record that
19 the phone -- a number in the defendant's home safe in his
20 bedroom was the head of the cartel's home phone number.

21 MR. PHILLIPS: Yes, sir. It was Lo or Nene's, he
22 goes by both names, home phone number.

23 So when you take all of that, you can't just ignore
24 their testimony, and it's completely valid to consider
25 that -- and the point I make in the Sentencing Memorandum for

1 a different issue is if you cut it in half, it's still
2 double --

3 THE COURT: Three times.

4 MR. PHILLIPS: It's still double -- I mean, it's
5 more than -- he would have to get below 150 to get to below
6 that offense level where he would get 360 to life, the
7 enhancements are another issue.

8 So when you consider all of that, it's absolutely
9 appropriate, and I argue the Court should attribute that
10 weight to Mr. Gibbs for all those reasons and the reasons
11 apparent in the transcript of the trial.

12 THE COURT: Well, what about the argument about not
13 being within the time alleged in the conspiracy?

14 MR. PHILLIPS: Well, Maldonado I believe is.

15 THE COURT: What it actually says, "at least in and
16 around January 2007."

17 MR. PHILLIPS: Yes, sir. And that's a point we
18 always make. And we always notice these things in 404(b) to
19 be safe, but a conspiracy under -- the case law I believe
20 supports this -- we are not bound to that date as a drop dead
21 date. I mean --

22 THE COURT: And we also have the relevant conduct
23 concept under sentencing that if -- particularly if we have
24 the same course of conduct, the Court can consider that in
25 terms of evaluating an appropriate sentence. So we have that

1 issue as well. And this seems to me to be classic, same
2 source of drugs, etcetera, same course of trade,
3 international drug trafficking, I mean, it just, you know,
4 with the same source seems to be classic, you know, same
5 course of conduct. So --

6 MR. PHILLIPS: Yes, sir. Because as you recall,
7 Benjamin Jenkins shed light on the fact that they gave,
8 Jenkins and Mr. Gibbs, they all were dealing with the same
9 guy and when they were arrested and taken off, and Gibbs
10 continued. And so you can't tell the story of the 14 kilos
11 and all this other stuff without the beginning of the story.

12 And so it's -- I think it's appropriate under
13 relevant conduct. And with the leeway we are given with our
14 indicting, and he certainly was on notice -- and we are not
15 talking about 10 years prior, we are talking about a few
16 months to a few years prior.

17 THE COURT: Well, Mr. Maldonado's is just 2006.

18 MR. PHILLIPS: Yes, sir.

19 THE COURT: And he's describing, you know, covering
20 the period into 2007 and --

21 MR. PHILLIPS: Yes, sir.

22 THE COURT: -- and thereafter, so --

23 MR. PHILLIPS: Squarely within it.

24 THE COURT: Squarely within it.

25 MR. PHILLIPS: And the only other thing I would

1 point out, I mean in their objections he tries to distance
2 himself again from Woodbridge Drive, but for all the reasons
3 that -- you reread the transcript -- so for all the reasons
4 we argue, I think that that's a nonstarter, that that --

5 THE COURT: We've got the GPS testimony and other
6 things. I just, you know, the jury had the case.

7 MR. PHILLIPS: Yes, sir.

8 THE COURT: I just feel on the issue of drug
9 weights, I overrule the objection of the defendant. I think
10 there is clearly a preponderance of the evidence. Frankly, I
11 believe it's beyond a reasonable doubt that the drug weights
12 exceeded significantly the amounts which would make a 38
13 appropriate, and so I deny that objection.

14 Let's proceed to the next one, which is the gun
15 enhancement.

16 I'll be glad to hear from you, Mr. Condon, relating
17 to the gun.

18 MR. CONDON: Thank you, Your Honor.

19 Your Honor, just on that last issue of drug weight,
20 um, I would like to make a comment that if there was that
21 much weight going back and forth between Charleston and
22 Atlanta, you know, where is the money? I mean, we are
23 talking about over a million dollars just from, we are
24 talking about Maldonado. I mean, well over a million
25 dollars. And so -- I mean, if he's a big, huge drug dealer,

1 you know, where is the funds? Where is the amenities that go
2 with that kind of lifestyle? I'm just saying --

3 THE COURT: The Government might ask the same
4 question to the defendant. I don't know. That's not --
5 that's not the issue. The issue is: Is there evidence that
6 he was engaged in drug trafficking? And there is tremendous
7 evidence of that and I deny that objection.

8 But let's proceed to the gun enhancement. Let me
9 hear -- what you got to say about that?

10 MR. CONDON: First of all, you know, Mr. Gibbs was
11 acquitted of that 924(c) charge.

12 THE COURT: But Mr. Condon, I will say that, you
13 know, I'm fully aware of the case law that says that the
14 standard for sentencing is beyond -- is preponderance, and of
15 course for a criminal conviction is beyond a reasonable
16 doubt.

17 But for purposes of this sentencing let's just focus
18 on the other gun. I mean, he was acquitted of this charge,
19 and I just frankly would rather focus on the other gun. So
20 if -- I'm going to find the enhancement, I'm going to base it
21 on the FNH weapon and not the one at the Applebee's. So
22 let's just proceed to that one.

23 MR. CONDON: Okay. And we are talking about the
24 situation at Applebee's.

25 THE COURT: I'm not -- I'm not going to -- I'm not

1 going to use that as a gun enhancement for the gun. So I
2 want to focus on the one -- the weapon that had been owned by
3 Timothy Maldonado, had been sold and was at the house, found
4 at the house pursuant to the search warrant.

5 Mr. Phillips, am I right about that, that gun was
6 found at the house?

7 MR. PHILLIPS: Yes, sir.

8 THE COURT: And on Woodbridge Drive.

9 MR. CONDON: Obviously the first thing is that
10 the -- Woodbridge is being linked to Mrs. Nelson. The lease
11 was in her name. There is no actual possession, so you have
12 to basically go on constructive possession. And there is no
13 evidence that he had dominion and control over that weapon in
14 connection with any drug activity. There is no connection
15 between what was found at Woodbridge and a gun.

16 THE COURT: Anything else?

17 MR. CONDON: Um, no, sir.

18 THE COURT: Mr. Phillips?

19 MR. PHILLIPS: I'll try to be brief, Your Honor,
20 it's not my strong suit, but just for the record --

21 THE COURT: I noticed, though, that when you go
22 through -- after a while, people get briefer as the
23 objections get longer, you know, people's enthusiasm fades.

24 MR. PHILLIPS: Yes, sir.

25 Just for the record, I'm not going to argue it, but

1 just for the record, we don't concede that the gun in the
2 trunk shouldn't -- we think it should be considered, we
3 understand your ruling, but we would argue it should be
4 considered based on the variance standards and based on the
5 fact that it's -- the enhancement doesn't have quite the same
6 elements either. I mean, a 924(c) sort of has a lot more
7 moving parts than the Guideline enhancement.

8 THE COURT: I fully agree with that. I just think
9 it's sort of like a materiality, it doesn't really matter if
10 the FNH weapon is in his possession at the place where we are
11 transacting drugs. It doesn't really matter. We need to get
12 to the other one, as well.

13 MR. PHILLIPS: And I understand, I just want to
14 preserve --

15 THE COURT: You are preserved. And I'm not really
16 ruling on it, I just don't think it's necessary to get to it.

17 MR. PHILLIPS: As far as the FNH he said there is
18 no evidence of dominion or control. Well, there is, because
19 again, we've already -- you've already said that you found
20 Mr. Maldonado credible.

21 THE COURT: He sold it to him. He paid \$2,000 for
22 the weapon, it was his weapon.

23 MR. PHILLIPS: It was registered to him. I mean,
24 that's not something we made up.

25 THE COURT: And we have the GPS evidence that placed

1 the defendant repeatedly at this residence during the
2 relevant period of time and the weapon is there. And we know
3 we've got ledger -- drug ledgers there, we've got money
4 counting machines, we've got weighting, we've got 12 kilos of
5 cocaine, I mean, it just seems like a lot there with that gun
6 there.

7 MR. PHILLIPS: That's our essential argument. And
8 he had other drugs that were seized, that were taken out of
9 the house that night, as well.

10 So when you -- when you look at the requirement --
11 essentially, the adjustment should be applied if the weapon
12 was present unless it's clearly improbable that the weapon
13 was connected with the offense. I don't see how when you buy
14 it from your source --

15 THE COURT: A drug --

16 MR. PHILLIPS: -- source nephew, and you have in
17 your house 12 kilos, which -- how much is 12 kilos? \$360,000
18 for the drugs, something that other people might want to take
19 from you with another gun somewhere else, it's a hard road to
20 travel to get to a place where the Court can make a finding
21 that's clearly improbable that that weapon was not connected
22 with a drug offense. And we argue on that basis that the
23 enhancement should apply.

24 THE COURT: Well obviously you are citing *U.S. vs.*
25 *McAllister's* principle there on the issue of clearly

1 improbable.

2 Mr. Condon, I'm glad to hear anything else that you
3 have to add on that, sir.

4 MR. CONDON: First of all, Your Honor, there is no
5 fingerprints that show that he had touched that gun.

6 And also -- I mean, I think you have to go on not
7 just -- you can't just speculate that the gun, you know,
8 belonged to him at that time. I think that you have to have
9 more than just -- and I think that's what it is, just mere
10 speculation that the gun is --

11 THE COURT: Now Mr. Condon, how do you reach that
12 when the uncontested evidence is he purchased it for \$2,000
13 from a drug dealer? I mean, he purchased it. It's at the
14 place where he is spending most of his time, where there is
15 huge drug trafficking. I mean, I just think that one has to
16 sort of suspend common sense to say that it's speculative. I
17 don't think it's speculative at all.

18 MR. CONDON: Your Honor, the thing is you don't
19 know what happened between the -- when the gun was purchased
20 and when it was found at Woodbridge. It's mere speculation
21 that he had custody and control over that weapon when the
22 search warrant was executed at Woodbridge.

23 THE COURT: Anything further?

24 MR. CONDON: No, sir.

25 THE COURT: I do find that the enhancement for a

1 dangerous weapon is appropriate here. It was present. The
2 Sentencing Commission talks about the danger associated with
3 guns and drugs and has appropriately applied an enhancement
4 associated when they are present. This was an area which the
5 drug trafficking, this Woodbridge Drive area, I think the
6 evidence is overwhelming that the gun was present, and it's
7 not clearly improbable to this Court that it was related.
8 And I think Mr. Gibbs had it for the very reason the
9 Government said, to protect himself because he was involved
10 in a very dangerous enterprise in which people might seek to
11 take it or which he might need to use it in furtherance of
12 his drug trafficking business.

13 So I deny that objection.

14 MR. CONDON: Your Honor, just for the record, I
15 would just note that, you know, the issue with regard to the
16 residence being used as a place where drugs are being used or
17 carried on, you know, obviously was weighed by Probation.

18 THE COURT: That is not an enhancement. You are
19 raising the question whether he was there. And I'm saying
20 the evidence in the record is that he was there regularly,
21 constantly during this period of time, that drugs were
22 present there, that he had his drug ledger there, that he had
23 money counting machines there and he had the gun there. Now,
24 you know, that's just -- there is just no contest in the
25 record on any of that.

1 And I find with regard to the gun enhancement,
2 that's the only issue I'm dealing with, that the defendant's
3 objection is overruled.

4 Now, how about the issue of organizer or leader?

5 MR. CONDON: Pardon me, Your Honor?

6 THE COURT: The issue of organizer. You objected to
7 the four-point enhancement of designating Mr. Gibbs as an
8 organizer or leader.

9 MR. CONDON: I think the main issue on that is that
10 whether the person has control over someone else. I don't
11 think there is any evidence that Mr. Gibbs controlled
12 anybody. And so in that situation which, you know, there
13 wasn't any evidence that he, in fact, controlled anybody for
14 that enhancement to be applied.

15 THE COURT: Okay. Anything further?

16 MR. CONDON: Just, you know, what's stated in our
17 memo, Your Honor, of March 23rd.

18 THE COURT: Thank you.

19 Mr. Phillips?

20 MR. PHILLIPS: Your Honor, there is significant
21 evidence that he was in control. And when you look at the
22 standard, it's not --

23 THE COURT: Control is not the only issue.

24 MR. PHILLIPS: It's not the only issue. And again,
25 Probation covered this as well or better than I could, so I

1 won't belabor their points, I adopt their points. But
2 looking at the evidence, this is what I'll point to. He was
3 clearly in control at Applebee's. He was -- you had
4 evidence -- Waiters gives you a window into what's going on,
5 and he's in charge. He's the source of supply. He's in
6 charge at Applebee's.

7 Then you have the ledger sheets where "Yack" is on
8 there as one name, and you heard testimony that Tremayne Ford
9 who is a codefendant in this case, his nickname is "Yack,"
10 you had, you know, Green and the numbers and testimony from
11 Officer Laird that those are all consistent with drug --

12 THE COURT: And the ledger had him fronting money,
13 which is another element to consider.

14 MR. PHILLIPS: Yes, sir.

15 So when you take all that in consideration -- you
16 also had the testimony of how the drugs transported back and
17 forth. It wasn't just Mr. Gibbs solely going, he would
18 deliver money and then someone -- there was occasion where
19 someone else would take the drugs back, which is common. So
20 when you take all that, you clearly have all of the elements,
21 as outlined by the probation officer, were met by the
22 evidence and that would be the argument the enhancement
23 should apply.

24 THE COURT: Yes.

25 MR. CONDON: I think you have to be very specific

1 with regard to the number of people. I mean, there is no
2 evidence that -- you know, the enhancement talks about --

3 THE COURT: Five or more. Are you talking about --
4 I'm sorry, the enhancement talks about --

5 MR. CONDON: Five or more people.

6 THE COURT: Yes. Look at the ledger sheet, 12, 14
7 names on that ledger sheet alone, you've got all the people
8 he's interacting with in Mexico.

9 You know, Mr. Condon, what we have here is, the
10 evidence is, that Mr. Gibbs was a major organizer and leader
11 of an international drug trafficking operation sourced from
12 Mexico, transferred through Atlanta, that were bringing very
13 large amounts of illicit drugs into the Charleston area. He
14 coordinated shipments, according the testimony. He
15 communicated regularly with Mr. Maldonado. I believe
16 Mr. Maldonado's testimony was they sometimes spoke every day.
17 He had -- he contacted -- had communication with the head of
18 the cartel, Nene, also known as Lo. He distributed it to
19 local dealers, we know that through the ledger sheet. He
20 fronted drugs to some of these, we see that on the ledger
21 sheet. He exercised decision-making authority. He planned
22 and organized.

23 I mean, I -- I think it's really clear and so I
24 overrule the defendant's objection seeking not to have him
25 designated as an organizer or a leader. I believe it

1 satisfies the Guidelines requirements.

2 How about obstruction?

3 MR. PHILLIPS: Your Honor, can I just clarify a
4 statement that I made? I think I said something in error,
5 and I don't want any issue.

6 THE COURT: Yes, sir.

7 MR. PHILLIPS: I don't think it changes anything,
8 but I said Mr. Maldonado -- I think I confused witnesses,
9 I'll retract the statement -- I said that -- I may have
10 indicated that he talked about other people taking the drugs
11 back, but I looked back at his testimony and he specifically
12 didn't know one way or the other. So I don't want -- I don't
13 think you considered that, but --

14 THE COURT: I did not. I've read his testimony.
15 I'm relying on my own recollection and my review of the
16 record.

17 Let's talk about obstruction. You have made an
18 objection about the two points for obstruction.

19 MR. CONDON: Yes, sir. Your Honor, my client
20 wanted to address the Court. I didn't know whether --

21 THE COURT: I would be delighted -- if he wishes to
22 speak, I would be delighted to hear from him.

23 MR. CONDON: Okay. I mean, that's up --

24 THE COURT: And let me just say this, Mr. Gibbs, I'm
25 going to give you a chance at any point to speak, but if you

1 want to speak now, I will allow you to do it. When we finish
2 with these objections, we are going to get into the
3 sentencing issues, and I would very much -- it's up to you,
4 sir -- I would love to hear from you then, but if there is
5 something you would like to say now, I'll be glad to hear
6 from you, sir.

7 Why don't you come to the podium with him, Mr.
8 Condon?

9 MR. CONDON: Your Honor, obviously it's Mr. Gibbs's
10 decision to do this.

11 THE COURT: He can do this. And Mr. Gibbs, you are
12 asking to speak to the Court, correct?

13 THE DEFENDANT: Yeah.

14 THE COURT: And I'm delighted to hear from you, sir.

15 THE DEFENDANT: I just wanted to go on record to say
16 that I'm going to go on with the sentencing part, and I don't
17 want Mr. Condon to represent me no more.

18 THE COURT: Well, he's representing you now and he's
19 been representing you throughout the trial. Are you saying
20 that after the sentencing is over, you don't wish to --

21 THE DEFENDANT: No, right now. I don't want him to
22 represent me no more.

23 THE COURT: Well, that's --

24 THE DEFENDANT: And I think that's my right that I
25 can concede to him representing me.

1 THE COURT: Well, you have a right to represent
2 yourself, but I need to bring -- let me finish and --

3 THE DEFENDANT: All right.

4 THE COURT: I will allow you to do this. I'll hear
5 from you and I'll be glad to hear from anyone else here.

6 Obviously these issues are very technical. There
7 are a lot of court cases, there is Sentencing Guidelines
8 rules, there are other issues that are -- that a lawyer
9 brings to the table, benefits to the client that are very
10 important. And there is great risk when you don't have that
11 background to try to represent yourself.

12 THE DEFENDANT: No, um --

13 THE COURT: But --

14 THE DEFENDANT: I'm going to let you -- no
15 disrespect, Your Honor -- I'm going to let you do what you've
16 got to do, but I'm going to get another representation. Me
17 and my family have pulled together with some other people, we
18 are going to get me another representation.

19 THE COURT: Well, you have a right to do that. Of
20 course you've -- Mr. Condon has represented you throughout
21 the trial and he's represented you in this sentencing. And
22 in my own opinion, he's done a very able job. But you are
23 the client, not me, okay? So it's your right under the Sixth
24 Amendment to represent yourself. And if you tell me that,
25 notwithstanding the warning I've given you, that I think

1 it's not in your interests to terminate him at this point,
2 and that you wish to represent yourself for the balance, I
3 will let you do that. I just don't think that's a good idea
4 for you, sir.

5 THE DEFENDANT: Yeah. I'm not representing myself,
6 he's not representing me, I'm just going to concede to the
7 Court. Y'all are going to do what y'all are going to do and
8 I'm going to hire another lawyer.

9 THE COURT: The problem is, of course, we are
10 proceeding with sentencing right now, and I'm not going to
11 stop the sentencing, and I think you are served --

12 THE DEFENDANT: I understand that.

13 THE COURT: -- and you are served obviously by
14 Mr. Condon continuing to represent you here. If -- and I
15 think it will be to your benefit to have him represent you
16 here. If after this hearing is over you wish to retain other
17 counsel, of course that's your right to do that.

18 I will also afford you the right, if you tell me you
19 want Mr. Condon not to represent you anymore, notwithstanding
20 the fact that I've warned you about the risk
21 associated with that, I will allow you to continue to proceed
22 representing yourself. I don't think that's in your
23 interests to do that and I'm trying to encourage you not to
24 do that, but you have the right to assert that.

25 So I would -- if you want to think about it a

1 moment -- but my own recommendation to you is that you allow
2 him to continue representing you through this, but if you
3 tell me you don't want him to, I will allow you to represent
4 yourself.

5 THE DEFENDANT: That's what -- I'm not letting him
6 represent me. This is something that was supposed to be said
7 from the beginning. This is not -- he's not going to
8 represent me, and y'all go ahead and do what y'all are going
9 to do. And that's my -- I think that's my right right there.

10 THE COURT: You are -- are you terminating
11 Mr. Condon as your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. You do not wish to have him
14 represent you any further?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Well, do you wish to represent yourself
17 now?

18 THE DEFENDANT: No, sir. But I'm going to let y'all
19 go ahead and do what y'all got to do.

20 THE COURT: We can't -- you either -- I can't allow
21 you -- you have a right to represent yourself, but you are --
22 if you wish -- if you terminate your lawyer, you need to
23 represent yourself.

24 Now, if you elect in representing yourself not to do
25 anything, that's your business, Mr. Gibbs. I'll be honest

1 with you, sir, I don't think this is in your interests to do
2 this. I think there are important issues to be addressed
3 here in sentencing and I think you need the assistance of
4 Mr. Condon to do that for you, but I will allow you to
5 represent yourself if that's what you wish to do.

6 THE DEFENDANT: Yeah. I'm going with -- he's not
7 representing me and I'm not representing me. Just go ahead
8 to your sentencing.

9 THE COURT: Mr. Gibbs, why don't you -- this
10 gentleman wants to speak to you a second. Why don't you step
11 back there and talk to him.

12 (Pause in proceedings.)

13 THE DEFENDANT: Um, they want to have a recess for
14 me and my family real quick if you don't mind.

15 THE COURT: I'm glad to have a recess. Very good.
16 We'll take a brief recess.

17 (Thereupon, there was a brief recess.)

18 THE COURT: Mr. Gibbs, you've had a chance to
19 consult with your family. We are going to go back on the
20 record.

21 Mr. Gibbs, if you could come to the podium, please,
22 sir.

23 MR. PHILLIPS: Judge, can I interject? Just from
24 our perspective, this is ultimately his decision the way he
25 wants to go, but I just wanted to frame the issue as we see

1 it, which might help and it may not.

2 THE COURT: I'm glad to. I'm getting ready to make
3 an inquiry under *U.S. Vs. Mullen* regarding the basis of his
4 request here, but I want to give him a chance to -- give him
5 a chance to speak to his family.

6 Mr. Gibbs, having consulted with your family, do
7 you -- are you -- what is your thinking concerning
8 Mr. Condon's representation?

9 THE DEFENDANT: Um, they want him to represent me.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: They want him to represent me.

12 THE COURT: You know, this is not a decision for the
13 Court or for your family, this is your decision, sir. And
14 the -- so you need to tell me, do you want Mr. Condon to
15 represent you? Having received the advice of your family and
16 considered it, do you want Mr. Condon to continue your
17 representation?

18 THE DEFENDANT: My family want him to represent me.
19 I don't care.

20 THE COURT: Well, that's not a good enough answer.
21 You need to tell me -- I know you've consulted with your
22 family, you obviously -- I watched you, you obviously have
23 respect for your family, they have respect for you, but you
24 need to make the decision. Based upon the advice you've
25 received from the family and from your own consideration of

1 this matter, do you wish to have Mr. Condon continue to
2 represent you? That's a simple yes or no answer.

3 THE DEFENDANT: I am trying to get past that.
4 That's just one of them questions that I try to really
5 concentrate, I trying to pray on that right there. I just --
6 I ain't getting no reply here, I'm just praying on this one
7 right here.

8 THE COURT: Well, tell me, if you would, what is
9 your basis for wanting to replace Mr. Condon?

10 THE DEFENDANT: I don't think he did the best job.
11 I don't think he did the best job. Like for instance, on the
12 closing, he spent three minutes; Mr. Phillips spent four
13 hours, you know. On direct -- um, cross-examination of the
14 witnesses, it was like, you know, lopsided. He catch a panic
15 attack in the middle of the case one time. And evidence was
16 moving around, we don't know where the evidence gone at.
17 When the prosecutor take 160 something evidence up and we
18 only put up 410, and some of our evidence got missing. It's
19 like things that I -- I saw that I was speaking up, but it
20 never got -- it never got brought up. It never got -- I
21 don't feel like I got a fair trial and I don't feel that he
22 represented me a fair way. It was like things that went
23 wrong. It was bad -- bad questions that wasn't answered. It
24 was bad -- for instance, the police said he was 500 to 600
25 yards away watching the house. If he was 500 to 600 yards

1 away, there is no possible way to be 500 or 600 away to see
2 the house without binoculars. He didn't have no binoculars,
3 all this stuff he didn't jump on. Just like you reread your
4 transcript, I reread my transcript and there is a lot of
5 things that -- you are a judge and I ask you to be honest on
6 your -- if you -- you was a lawyer one time before, right?

7 THE COURT: I was, sir.

8 THE DEFENDANT: And was bad things that you would
9 pick up in that case that you would have asked in
10 cross-examination that you would pick up on the lies and
11 stuff that they told.

12 THE COURT: Is there anything about the sentencing,
13 the way Mr. Condon is handling your sentencing hearing, that
14 you are unhappy --

15 THE DEFENDANT: It's like the same thing going on
16 into the -- from the trial to the sentencing, the same thing
17 going on from the trial to the sentencing.

18 THE COURT: Specifically what are you speaking of?

19 THE DEFENDANT: Like it's -- he don't got it
20 together. He coming up short with everything. He's trying
21 to find things -- he's a good man. He's a spiritual man and
22 my spirit love him, but I've got nine kids, three grandkids,
23 I'm trying to fight for my life right here, Judge. He's
24 not -- he's -- I just need you to be honest with the Court
25 for a minute. Are you a God fearing man?

1 THE COURT: You don't get to question the Judge.

2 THE DEFENDANT: But I mean, it's some -- it could
3 have been represented better.

4 THE COURT: Well, is there -- has he met with -- was
5 Mr. Condon meeting with you and communicating with you?

6 THE DEFENDANT: Not as much as I want. And when he
7 did come, it was in a booth. And they got a lot of rooms
8 that we can go into and write papers in and sit down, not a
9 glass, not a glass booth.

10 And it's like he -- I believe in my heart that he
11 did the best that he could do, but it was too much for him.
12 We had a lawyer, the lawyer ran off with our money, Andy
13 Savage, and left us Condon. Condon leave me but one case and
14 then they combined the cases at the last minute, so
15 Mr. Condon was on the outs. He didn't have the proper help.
16 He didn't have all the things that he needed to represent me
17 in my best interests. He didn't have it.

18 THE COURT: But did he -- you can talk to him, you
19 communicate with him?

20 THE DEFENDANT: Um, I called his office.

21 THE COURT: I'm talking about when you meet with
22 him, y'all were able to communicate with each other?

23 THE DEFENDANT: We -- we couldn't communicate all
24 the way because we was -- he keep -- when he keep coming they
25 keep putting him in a glass. And when we are talking it was

1 like we can't show each other everything. If I'm sitting
2 right beside you, Your Honor, I can show you things. I can
3 show you -- talk to you better, not through a glass where you
4 are not getting everything that I'm saying and I'm not
5 getting everything that you are saying, I'm not seeing
6 everything.

7 And when everything came down to the -- to it and
8 everything, it's like truthfully he asked questions that I
9 wouldn't ask, but I have questions that he didn't ask. It
10 was like, how could this man go from Applebee's all the way
11 to the Bank of America, say, um, put up drugs and be back on
12 Johns Island in 20 minutes when it going take you over 20
13 minutes to get there? It's going to take 20 minutes to get
14 to the Bank of America on Remount. These are the things that
15 he didn't ask. He didn't give the jury a time to have doubt.
16 Your Honor, he just got up and asked some of the questions
17 and that's it. And then there was two prosecutors against
18 one, and I think that was unfair. Two prosecutors against
19 one lawyer, that's like really unfair.

20 So I think through the whole thing I didn't get a
21 fair shake. We -- we asked for Maldonado's border record
22 because he was on -- he said he was down in Mexico and when
23 he came back, when them had an argument, and he came back and
24 then he got caught with drugs and going in Kentucky and got
25 locked up. So how long did he been in Mexico? When did he

1 been in Mexico? When he was telling that prosecutor that he
2 was here, how we know that he wasn't in Mexico? Why can't we
3 get his border patrol -- border records? He had a border
4 pass, didn't he? He stated that. He said he was a citizen.
5 Was he sneaking over to Mexico and sneaking back? These are
6 the things that he could ask and the jury would have been
7 like, yeah, you know...

8 THE COURT: Well, at this point -- I've made an
9 inquiry here and I don't see a basis -- there does not appear
10 to be a total lack of communication between counsel and the
11 defendant. He does have concerns which he says were from the
12 trial, and he also seems unhappy with the way the
13 presentation is being made. The Court observed Mr. Condon
14 both at the trial and here, and of course I've read his
15 briefs, and Mr. Gibbs, I respectfully disagree with you. I
16 think he is able to represent you. It's a difficult
17 situation. Some of these issues are very hard. He's doing
18 his best with a difficult set of facts.

19 I also find that the timeliness of this issue, I'm
20 considering under *U.S. vs. Mullen*, raising it at the
21 sentencing hearing is way too late in the process,
22 particularly about matters that happened at trial. Of
23 course, Mr. Gibbs, you will have a right to appeal. You will
24 have a right to seek post conviction relief. You will have a
25 right to raise ineffective assistance of counsel issues. So

1 none of these issues are foreclosed from you subsequently
2 raising. I, of course, observed the trial, if I had a
3 concern that you were not receiving competent counsel, I
4 would have addressed it right then and there. I would not
5 have sat there --

6 THE DEFENDANT: Wait a minute, Your Honor.

7 THE COURT: -- and accepted that.

8 THE DEFENDANT: Do you remember at the end of the
9 trial he didn't ask for -- what was that for, that you had
10 to -- a 2253 something? He didn't ask for this and the
11 prosecutor had to ask him, Joe, you've got to ask for this.
12 When the prosecutor started to have to ask you and help you
13 with your case, then something is wrong. I don't know -- at
14 the -- the suppression hearing, the prosecutor had to tell
15 him, well, he didn't turn in no paperworks with case law. He
16 didn't -- he told you about the wall stuff, but he didn't
17 have no case law to back it up, the prosecutor had to brought
18 that up. These are the things that the prosecutor brought up
19 and said, Well, Joe, you don't have no cases to back these
20 up. How could you see somebody representing me with all
21 these folders when they don't have cases to back me up? I
22 mean, and he's arguing, no, that they've got to have cases to
23 back it up.

24 I love Mr. Condon with all my heart. He's a good
25 man, he's a spiritual man, but I would rather just go ahead

1 and -- there is a saying, um, you might as well just lie down
2 and play dead if you are going to lie with the fleas.

3 THE COURT: Well, the first issue I need to address
4 is whether I'm going to allow you at this late date to
5 substitute counsel. And under the standards of *U.S. vs.*
6 *Mullen* I deny that motion.

7 Now, we are back at the point where we were, which
8 is, do you wish Mr. Condon to represent you or are you going
9 to represent yourself? My strong advice to you is not to
10 represent yourself, to have Mr. Condon represent you. I take
11 it from what you share with me that your family has urged you
12 to do the same thing. But in the end, you have to make the
13 decision whether you wish to have Mr. Condon represent you.

14 I will tell you that when we finish these
15 objections, we then need to deal with sentencing. And one of
16 the issues is whether a variance is appropriate because the
17 Guidelines, unless we have some change here, is life. And I
18 have the discretion to go below that. And I had the lawyers
19 brief the issue of a variance. Mr. Condon filed a very able
20 brief on your behalf, Mr. Gibbs.

21 THE DEFENDANT: Yes, he do. He filed some good
22 paperwork, it's just --

23 THE COURT: And I -- and I wanted to hear from him
24 and you on that issue. It's a very important issue for you,
25 sir, and I think you will be more ably represented to have

1 him assisting you, but I can't make you do that. You have
2 correctly stated that if you wish to represent yourself, I
3 must allow you to do that. I can give you all the advice to
4 the contrary, but in the end, just like your family can, your
5 family can give you the best advice they can, but in the end
6 you have to agree to have Mr. Condon represent you. And if
7 you tell me that you want to represent yourself, I'm not
8 going to stop you. I just -- it will be against the advice
9 of the Court and obviously of your family, but that's your
10 decision.

11 THE DEFENDANT: Your Honor, I love my family. He
12 represent me.

13 THE COURT: Very good. If you will retake your seat
14 then.

15 We were at the issue of obstruction, Mr. Condon, and
16 we were going to address the issue of the Government's -- of
17 the defendant's objection to the two points for obstruction.

18 And as I understand it, Mr. Condon, there are two
19 issues, one of them is in the Presentence Report regarding
20 communications via an attorney to Sidney Waiters and then
21 there is this issue of an alleged statement between Mr. Ochoa
22 and the defendant.

23 Am I correct about that?

24 MR. CONDON: Yes, sir.

25 Obviously he didn't have any control over any

1 attorney, you know, having contact with Sidney Waiters,
2 that's strictly the attorney's decision to do that.

3 In terms of -- I don't think there was any
4 threatening or intimidation with regard to Sidney Waiters and
5 it was just an understanding of --

6 THE COURT: It's your suggestion that the attorney
7 went there by himself and on his own initiative and not on
8 behalf of his client to persuade him to what would have been
9 perjurious testimony?

10 MR. CONDON: Well, I think the -- I mean, I
11 wouldn't necessarily put it that way. I think he was just
12 trying to --

13 THE COURT: Why would the attorney do that? Why
14 would the attorney do it on his own?

15 MR. CONDON: Well, I think he's trying to sort out
16 a complicated situation and see if Mr. Waiters could take
17 responsibility for what he did, and I think that's what he
18 was trying to sort out.

19 And then the other thing is with regard to Pedro
20 Ochoa, obviously Mr. Ochoa testified there wasn't any
21 intimidation or threat with regard to that; it was strictly a
22 comment.

23 THE COURT: It was, I'm sorry, what?

24 MR. CONDON: It was strictly a comment that, you
25 know, to Ochoa about testifying at trial. And so I don't

1 think there is any type of threat or intimidation with regard
2 to that.

3 The other issue is with regard to, you know,
4 Mr. Waiters, that's strictly trying to sort out basically
5 responsibility for what happened. I don't think there was
6 any type of -- type of goal, you know, to commit perjury or
7 cause somebody to commit perjury.

8 THE COURT: Okay. Mr. Phillips, what's your
9 thoughts about this?

10 MR. PHILLIPS: Your Honor, regarding Mr. Waiters,
11 what Mr. Condon ignores is Mr. Waiters's testimony on direct
12 examination, the copy I have early on in the case, I
13 requested specific witnesses, and then I know we now have the
14 full volume, so my page is 27, but I'm sure there it is a
15 different page. But I can tell you -- I'll read the
16 testimony into the record, it's very short.

17 Mr. Bianchi asks whether Mr. Waiters and Mr. Gibbs
18 had a conversation about what had happened at Applebee's.

19 "Did you have a conversation with the defendant
20 prior to being booked in at the jail?"

21 Waiters answers: "On the way to the jail."

22 "Question. From where?"

23 Answer by Mr. Waiters: "From the Nation's Bank to
24 the county jail.

25 Question. And tell us about that conversation, what

1 happened?"

2 Answer by Mr. Waiters: "Conversation was he
3 accepted the gun charge, I accept the coke charge and he'll
4 pay my attorney and everything and give me ten grand to take
5 the charge."

6 "Whose idea was that?"

7 "That was his idea."

8 "So this was him asking him to do that?"

9 "Yes, sir."

10 THE COURT: That's not the lawyer relaying that.

11 MR. PHILLIPS: This is Mr. Gibbs. So this is
12 direct testimony -- and it goes on, you can find that in
13 the -- it's in the transcript, it goes on, there is more
14 details.

15 So we are not speculating -- first of all, there is
16 a conversation -- there is testimony regarding a conversation
17 between the defendant and Mr. Waiters. And then you have,
18 the follow-up to that is the attorney coming and doing that.

19 THE COURT: Actually coming twice or something.

20 MR. PHILLIPS: Yes. He came twice.

21 And there was more evidence -- there was evidence,
22 there were jail calls that we set aside. You may recall
23 there was some issue -- there was a motion filed to suppress
24 the introduction of the jail calls. And I can proffer to the
25 Court and Agent Rape could, they have a copy of it, there was

1 more evidence that wasn't presented that --

2 THE COURT: Well, I'm not going to consider that.

3 MR. PHILLIPS: But we could proffer that.

4 But the point is, just looking at Mr. Waiters and
5 what I just read, that's enough. And then -- and I think the
6 Court, you know, certainly has enough information to make a
7 finding as to the credibility of Mr. Waiters as well as the
8 credibility of Mr. Ochoa, and they don't have to be overt
9 threats, they don't even have to be threats for them to be
10 obstruction.

11 THE COURT: What about Mr. Condon's point in his
12 brief that -- the comment about being silent could be
13 interpreted as simply an observation and not an effort to
14 obstruct justice? How about that, Mr. Phillips?

15 MR. PHILLIPS: Um, well, I want to -- if I could
16 have one second to -- I need to grab Mr. Ochoa. What I would
17 like -- you can -- I would want -- before I answer that, I
18 want to see what Mr. Ochoa said exactly. But certainly
19 Mr. Ochoa is the one testifying about it. His perceptions as
20 he testified I think are more important than us just
21 interpreting it in a vacuum.

22 THE COURT: That's okay. I mean, I would like to
23 hear it, but I'm -- you know, Mr. Condon makes the point that
24 it was, you know, it was more of a sort of commentary that if
25 everybody stays quiet we are probably better off. I mean,

1 that's getting -- that's, you know, that's close. I mean,
2 there is some case law that says telling people to be silent
3 is obstruction, but is that advice to be quiet or is that an
4 observation?

5 MR. PHILLIPS: If I could have one moment, Your
6 Honor, I just want to -- I want to -- I want to see exactly
7 what Mr. Ochoa testified as to that point. I think I'm
8 close.

9 || (Pause in proceedings.)

10 MR. PHILLIPS: I'm having difficulty finding it. I
11 believe we talked about it at the trial.

1 connotation.

2 And I think that given the context and the timing
3 and where this statement was made, it's reasonable to believe
4 that he was trying to influence Mr. Ochoa's decision and
5 anyone else who was listening. It's not a simple observation
6 like, the food today was nasty, it's something directly
7 related to the case. And I think it sort of stretches -- it
8 stretches logic to say that it was an innocent observation
9 because Mr. Gibbs --

10 THE COURT: But it doesn't need to be an innocent
11 observation not to be obstruction.

12 MR. PHILLIPS: Well, but I think -- I think it's
13 not unreasonable to think that he was saying it to say --
14 yes, it's an observation, but he was saying it to influence
15 the codefendants around him to help himself and to influence
16 witnesses.

17 THE COURT: It just seems to me to be a completely
18 different -- certainly the statements to Waiters is very
19 direct.

20 MR. PHILLIPS: Yes, sir.

21 THE COURT: That particular statement in the
22 vehicle, transport vehicle, where he says -- you know, he
23 lays the framework, You do this, I'll do that. I'll pay you
24 \$10,000. I'll hire your lawyer.

25 Mr. Condon, anything you want to add? I'm kind

1 of -- I'm not persuaded the Ochoa thing is obstruction. I'm
2 more concerned about the Waiters's statement.

3 MR. CONDON: Well, the thing about Sidney Waiters
4 is that on his own at a bond hearing he admitted that he made
5 those statements. So he freely and on his own admitted that
6 the stuff was his at a bond hearing with nobody around,
7 nobody forcing him to do anything.

8 THE COURT: But he thought he had a deal. I mean,
9 he testified at trial, I thought very credibly on this issue,
10 and that this was part of a deal. He was supposed to get a
11 lawyer. He's supposed to get \$10,000. He would take the
12 drugs, Mr. Gibbs take the gun.

13 Um, I mean, that's -- it looks like to me
14 obstruction. I mean, that's a very different character.
15 When I compare that to -- and I share your view, I mean, it's
16 a little ambiguous about what the Ochoa statement means. It
17 could mean what the Government says or it might be your
18 argument. And I just think that the -- in that situation,
19 the Government's got the burden by a preponderance of the
20 evidence and I just think that he doesn't carry the burden.

21 The Waiters's statement is a different kettle of
22 fish to me because that is a very specific scheme. When you
23 highlight the fact that the lawyer went over there but the
24 lawyer didn't deliver the original deal, he's the followup in
25 the original communication that is the foundation of this

1 discussion, is allegedly between Mr. Gibbs and Mr. Waiters.
2 That's my concern.

3 MR. CONDON: Well, the thing is that obviously
4 that's a different person and --

5 THE COURT: Well, let's just take -- let's go back,
6 let's eliminate the attorney's role in this for a second.

7 Let's just go to that discussion in the vehicle that day, on
8 his transport where he says, Here is the proposal. Address
9 just that.

10 MR. CONDON: Well, I would address whether the
11 credibility of -- Sidney Waiters is credible or not.

12 THE COURT: Other than credibility, what else you
13 got?

14 MR. CONDON: Um, because it's just one word against
15 another. That's all it is.

16 THE COURT: I understand. What else you got?

17 MR. CONDON: That --

18 THE COURT: I've got only one evidence in the record
19 in front of me.

20 MR. CONDON: I think that's all you've got is just
21 two people saying --

22 THE COURT: I've got one person. I've got
23 Mr. Waiters. I don't have anybody else.

24 MR. CONDON: Right, but just his testimony.

25 THE COURT: It's his testimony, that's correct.

1 MR. CONDON: And I think it's very inconsistent,
2 Mr. Waiters is, and I think that's why he's not a credible
3 individual.

4 THE COURT: Any further argument?

5 MR. CONDON: No, sir.

6 MR. PHILLIPS: One quick point.

7 Waiters, it was sworn testimony, first of all. And
8 the attorney, if you -- I understand the Court wanted to
9 remove the attorney from it, but the attorney -- the attorney
10 shows the consistency of the statement because Waiters says,
11 We had this conversation, and the attorney is following up on
12 that and doing exactly what they were talking about.

13 THE COURT: In furtherance of that scheme.

14 MR. PHILLIPS: In furtherance of the agreement
15 previous.

16 THE COURT: And he wants all the drugs, not part of
17 the drugs.

18 MR. PHILLIPS: Yes.

19 So that's -- you don't just have Waiters; you have
20 an act in furtherance of the agreement that Waiters testified
21 to.

22 THE COURT: You know, Mr. Phillips, I was attempting
23 to make the point that Mr. Condon was treating it as if the
24 entire scheme came from the attorney and that wasn't correct,
25 that -- the initial communication.

1 Anything further, Mr. Condon, on this point?

2 MR. CONDON: No, Your Honor.

3 THE COURT: I overrule the objection on the
4 enhancement relating to obstruction entirely on the issue of
5 the Waiters's discussion.

6 I sustain the view of the defendant regarding Ochoa.
7 I don't believe the Government's carried its burden of
8 showing by a preponderance of the evidence, but there only
9 need to be one basis for the obstruction, so the objection to
10 the two-point enhancement of the defendant is denied.

11 Now, I think that's the list of the objections, Mr.
12 Condon. Are there any others that you wish to bring in front
13 of me before we proceed to sentencing?

14 MR. CONDON: I don't think -- that was the basic
15 ones, but I do want to make my March 23rd, 2012 objections
16 part of the record.

17 THE COURT: I welcome that. You are welcome to do
18 that, sir. I've read that several times myself; I thought it
19 was a very fine summary written.

20 So if you would like to mark that and make it an
21 exhibit, we'll be glad to make it an exhibit, Mr. Condon.

22 MR. CONDON: Yes, sir.

23 THE COURT: And let me pronounce, based upon me
24 addressing all of the objections, the Guideline provisions.

25 The total offense level is 46.

1 The Criminal History Category is V.

2 The Guideline is life and 10 years supervised
3 release.

4 And I am operating on this basis that the range is
5 10 years to life.

6 MR. FRYE: Your Honor, I'm sorry, if we are
7 operating on 10 years to life, the SR would be at least five
8 years.

9 THE COURT: The -- I'm sorry, the --

10 MR. FRYE: The supervised release.

11 THE COURT: Is a minimum of five years?

12 MR. FRYE: At least five years instead of at least
13 10 years.

14 THE COURT: And if it's five years, is there a
15 maximum?

16 MR. FRYE: No, sir, Your Honor.

17 THE COURT: So the supervised release will be five
18 years to life based upon the Court's finding that I'm
19 relying -- I'm not giving the 851 enhancement and it's 10 to
20 life is the range.

21 Okay. Mr. Condon, I will hear from you on
22 sentencing in any order that you think is advantageous to
23 your client.

24 MR. CONDON: Your Honor, in this situation we filed
25 a memo asking for a variance.

1 THE COURT: Yes, sir.

2 MR. CONDON: And the various points of that memo
3 are that the 3553 factors are to be considered by the Court
4 with regard to sentencing after going through the Sentencing
5 Guideline calculation.

6 Our position is that when the Court looks at those
7 factors, you know, the 3553, to impose a sentence that is
8 sufficient but not greater than necessary to comply with the
9 purposes set forth in 3553, I think that admonition is a type
10 of admonition that Congress wanted to show that the old
11 classic type of argument with regard to punishment where you,
12 say, you throw the book at him or put him underneath the jail
13 where there is no mercy, those type of admonitions, I think,
14 are out the door.

15 THE COURT: I share that view. The issue is I need
16 to have a sentence that is sufficient to serve the purposes
17 of the act but not greater than necessary to accomplish that
18 end.

19 MR. CONDON: Right.

20 And I think you have that type of flexibility to
21 impose a sentence that is -- that deviates significantly from
22 the Sentencing Guidelines.

23 What I think is important about the statutory
24 minimum, if you looked at it from the standpoint, well, you
25 know, initially it was -- there was a 20 to life. Well then

1 there is basically -- for a man that is 40 years old, there
2 is not that much difference between 20 years and life because
3 he's going to basically be old when he gets out regardless.

4 But when you look at it from the standpoint of a
5 mandatory minimum of 10 years to life, then there is a wider
6 range and different perspective, and you realize how --
7 obviously how serious it is to impose a sentence of
8 significant time.

9 And for Mr. Gibbs, a sentence that would require him
10 to spend the rest of his life would be extremely, extremely,
11 extremely harsh.

12 Your Honor, what we are -- and I want you to hear
13 from the family and I want you to hear from Mr. Cohen and
14 hear from Mr. Gibbs in terms of sentencing.

15 Now, the --

16 THE COURT: And Mr. Condon, let me say to you that
17 we started at 10:00 this morning, and I will go as long as it
18 takes. Do not rush, this is important to Mr. Gibbs --

19 MR. CONDON: Yes, sir.

20 THE COURT: -- and we'll take all the time we need.
21 So if anyone wishes to speak, I'll be glad to hear from them.
22 I want to hear this fully. It's an important decision to be
23 made and I want to have the best evidence both from the
24 defense and from the Government upon which to make this
25 decision.

1 So please proceed, but don't feel you are in any
2 rush to get through this proceeding.

3 MR. CONDON: Thank you, Your Honor.

4 I think the important thing is to realize that --
5 and Marcus has participated in programs at the detention
6 center. You know, that's a little, you might say, unusual.

7 THE COURT: I read the certificates and I read the
8 letter you submitted, yes.

9 MR. CONDON: And I think that's quite admirable of
10 him, and I think that shows a different side of Marcus. I
11 know that the seriousness of this case and how serious it is,
12 but there is a different side to Marcus. He is a family man.
13 His son was supposed to be here but he is in the military; he
14 couldn't be here, so he sent a letter.

15 But I did want you to kind of go through the people
16 that are here to testify, to talk about Marcus, and --

17 THE COURT: You know, Mr. Condon, the Government
18 will do a great job of telling me all the bad things about
19 Mr. Gibbs, and I'm hoping the family will share with me
20 another side of him so we have a fuller picture from which to
21 base sentencing.

22 MR. CONDON: Yes, sir.

23 First I would like to call Mr. Cohen just to give
24 his perspective and what basically to look at with regard to
25 this case.

1 THE COURT: Very good. If you would just come to
2 the podium.

3 If you could state your full name, sir

4 MR. COHEN: Yes, sir. I'm Howard Gerald Cohen.

5 THE COURT: Yes, sir. Please proceed.

6 MR. COHEN: I'm a private detective with 40 years
7 experience. I have investigated a number of drug-related
8 cases in my career. I'm also the executive director of the
9 Low Country Justice Commission, an organization trying to
10 bring about equal justice, equal education and equal economic
11 opportunity. The Commission is made up of former judges,
12 attorneys, civil rights leaders, clergy and concerned
13 citizens.

14 I was brought into the case shortly after Marcus
15 Gibbs was convicted due to a chance meeting with Mrs. Gibbs's
16 mother who asked me to look into factors surrounding the hire
17 of Mr. Gibbs's first two attorneys. They had paid them large
18 sums of money and these lawyers were taking the money and
19 demanded more money after the State and Federal cases were
20 combined.

21 The family had no more money; therefore, they had to
22 use the Government-paid lawyer, which of course is Joe
23 Condon. Mrs. Gibbs's home, I understood, was in foreclosure
24 at that time.

25 My job is to ensure that Mr. Gibbs received a fair

1 trial. Certain questions have arisen that demand answers.
2 When I complete my investigation, it's my sincere hope that
3 Mr. Gibbs and his family are satisfied that Mr. Gibbs
4 received a fair trial and fair treatment by the Federal
5 Government.

6 According to the United States Department of
7 Justice, Office of Justice Programs Bureau of Justice
8 statistics, black non-Hispanic males have an imprisonment
9 rate seven times higher, seven times higher than white males,
10 non-Hispanic males.

11 An article from the *USA Today* posted September 22nd,
12 2010 titled: "Prosecutor's Conduct Could Tip Justice Scales.
13 With the help from legal experts and former prosecutors, *USA
14 Today* spent six months examining federal prosecutors' work,
15 reviewing legal databases, department records, and tens of
16 thousands of pages of court filings. Although the true
17 extent of the misconduct by prosecutors will likely never be
18 known, the assessment is the most complete yet of the scope
19 and impact of these violations.

20 "USA Today found a pattern of serious, glaring
21 misconduct, said Pace University law professor Bennett
22 Gershman, an expert on misconduct by prosecutors. It's
23 systemic now and the system is not able to control this type
24 of behavior. There is no accountability. He and Alexander
25 Bunin, the Chief Federal Defender in Albany, New York call

1 the newspaper's finding just the tip of the iceberg because
2 many more cases are tainted by misconduct that are found. In
3 many cases, misconduct is exposed only because of vigilant
4 scrutiny by defense lawyers and judges." That was one of
5 my concerns with some of the information on this particular
6 case.

7 In addition to, in my opinion, misleading the jury,
8 and even, Your Honor, as to Mr. Gibbs being at the center of
9 an extensive drug trafficking ring, information came to me
10 from my client of prosecutorial misconduct which we are
11 looking into. That's why I wanted to speak with the jurors.

12 I was investigating this fact when Attorney Condon
13 received a phone call from Your Honor asking me to write
14 letters instead of going to their residences. This is very
15 time-consuming, as I need to address questions by mail, then
16 I have to wait for a response, then I have to come back with
17 more letters --

18 THE COURT: But you know, Mr. Cohen, I have an
19 obligation to protect my jurors --

20 MR. COHEN: I understand.

21 THE COURT: -- who were feeling intimidation, and I
22 have to balance the right -- I want nothing to obstruct the
23 ability of people on behalf of Mr. Gibbs to explore any
24 inappropriate conduct or action. I did not personally
25 observe it at trial. I would have stopped it if I had.

1 MR. COHEN: Right.

2 THE COURT: And I'm open, should evidence come
3 forward -- in my recent telephone conference with counsel,
4 the prosecutor stated to us that he would want to be aware if
5 there was any impropriety; he was unaware of any. And I've
6 never seen any suggestion from his office of anything like
7 that. But if there is evidence, we welcome that. I want you
8 to know that, and I'm not trying to obstruct you in any way,
9 but I've got to protect -- you can imagine how intimidated a
10 juror may feel who have, you know, participated in a case
11 involving Mexican drug cartels where someone appears at their
12 home.

13 So I'm trying to balance that. And the way I've
14 elected to do it, and I think it's a reasonable way, is to
15 have you communicate with them and make it clear that they
16 have a right and not the obligation to speak to you. And if
17 they wish to, it's their right to do that. It's not a
18 perfect solution, but it's one that tries to balance the
19 interests of everyone here.

20 MR. COHEN: And I can understand that. I
21 understand the reasoning, you know, with what the allegations
22 are of the extent of the drug trafficking, you know, as well,
23 but that made things a little bit harder. It's very
24 difficult for me to interview somebody on the telephone or,
25 you know, in letters. I like to talk to the person

1 individually.

2 Um, Joe had mentioned to me that they thought they
3 were intimidated. I was -- I have been doing this for 40
4 years, you -- you know, you get a lot more with sugar than
5 vinegar. I never go into a witness or anybody that I'm
6 interviewing to intimidate. That's not going to do me any
7 good, especially with jurors.

8 THE COURT: Of course, Mr. Coleman, it may have been
9 unintended, but I will tell you that my chambers -- those
10 jurors were alarmed, you know, that someone was -- because I
11 think they view themselves as generally anonymous, and then
12 suddenly someone is showing up to their home, and
13 particularly the nature of these allegations. But I'm here
14 today to deal with the sentencing and I --

15 MR. COHEN: I understand.

16 THE COURT: -- and my major issue is Marcus Gibbs,
17 the man.

18 MR. COHEN: Right.

19 THE COURT: And I welcome any information you have
20 that's relevant. I'm not trying to cut you off, but I'm sort
21 of the last guy in the world to worry about racial profiling
22 or anything like that with my background. So I'm the last
23 guy you need to worry about about that.

24 What we need to do is I'm trying to be the
25 fairest -- provide the fairest and most just sentence. And I

1 take it you've had some contact with Mr. Gibbs and his
2 family.

3 MR. COHEN: That's correct.

4 THE COURT: If you have information to share with me
5 about him that would -- about an appropriate sentence, I
6 would welcome you share that with me.

7 MR. COHEN: I would like to, if the Court will
8 indulge me, go through some of the factors that I think are
9 questionable that were the source of some of our
10 investigations.

11 THE COURT: I'm glad to hear that, but I want you to
12 remember that if there is a reason the verdict should be set
13 aside, that's a different matter. And it wouldn't -- I know
14 of no information that would justify that, but if it came to
15 my attention and I determine it was appropriate, I would set
16 aside the sentence. That's not really relevant to what the
17 sentence, because the sentence --

18 MR. COHEN: I got you.

19 THE COURT: -- is valid as of now. And what I'm
20 trying to determine is the information about Mr. Gibbs
21 personally and what's the appropriate sentence for him.

22 So I -- what will be most valuable to us -- I'm not
23 trying to cut you off, I may one day hear all this
24 information you have in a motion to set aside a verdict --
25 but at this point what I need is information relating to

1 Mr. Gibbs. That's what is relevant in this proceeding.

2 MR. COHEN: I see.

3 THE COURT: And I know you've had some chances to
4 talk with him, to talk to his family, and I welcome any
5 information you can share with me.

6 MR. COHEN: Right. And the main thing is, in terms
7 of that, we are questioning the extent of his involvement in
8 the drug trade, you know, that these are things that, you
9 know, that I should probably address with you later then.

10 And I've spoken with Mr. Gibbs and his family
11 extensively, um, over the past several months. And, you
12 know, he's become an extremely religious person and he has a
13 lot of faith in God. That's what he told me, and, you know,
14 in here with his discussions with Mr. Condon. Basically, he
15 wants to leave it in God's hands. Of course we can't afford
16 to do that, we live in a material world. At any rate, you
17 know, I'll conclude my comments at this point. And I
18 appreciate your indulgence.

19 THE COURT: Well, Mr. Cohen, you having had spent
20 some time with him, do you have any thoughts about the
21 wisdom, the lack of wisdom, assuming that he is guilty of as
22 he has been charged, with the appropriate -- any guidance to
23 the Court about knowing Mr. Gibbs about what an appropriate
24 sentence would be and whether a sentence of life is necessary
25 to accomplish the protection of the public and so forth? I

1 wanted your thoughts about that.

2 MR. COHEN: I don't think so. I think, you know,
3 in my personal opinion from my experience over the past 40
4 years, I'm involved in a lot of interfaith activities, so I'm
5 involved with a lot of clergy on a major level. I think that
6 a life sentence for this young, this fellow, he's not a young
7 man anymore --

8 THE COURT: He's looking younger to me every day at
9 my age.

10 MR. COHEN: I know. But frankly, that would be --
11 that's the end of his life, you know, that's it. The
12 problems that he's had, what he was involved with in the
13 past, he seems to be a changed man from the discussions that
14 I've had with him. Again, it appears that he's become very
15 religious. You know, as I said, everything is in God's
16 hands, that's his perspective on this whole thing. I don't
17 see him that much as a threat necessarily. And I disagree
18 with the assessment of the prosecution, of the Federal
19 Government, of the extent that he was involved, you know, in
20 these matters. I mean, I know the evidence is there, but
21 there is questions about the evidence. But in terms of his
22 person, you know, I frankly, after meeting him and talking
23 with his family and knowing his situation, you know, I would
24 hate to see him have a sentence that puts him away for the
25 rest of his life. Rehabilitation is an important factor, of

1 course, in the judicial system. And I, you know, I would
2 hope that you would see it that way.

3 THE COURT: Thank you, sir. I appreciate you coming
4 in.

5 MR. COHEN: Appreciate it. Thank you, Your Honor.

6 THE COURT: Mr. Condon, next witness.

7 If you could state your full name, sir.

8 MR. WILLIAMS: Robert Earl Williams.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: I praise God for this opportunity
11 and I praise God that you gave me this opportunity.

12 I'm here to say that when I look at Marcus, I see a
13 young man that is looking for another chance. I see a young
14 man, he has nine children; I have eight, four boys and four
15 girls. He needs to be in their life. I'm hoping and
16 praying -- we did a lot of praying -- that the decision that
17 comes from the Judge's mouth will affect his future with his
18 children. So we are asking you to search your heart and make
19 the best decision that would impact his life with his
20 children, his children, nine children. We all have done
21 wrong in life. And if God wasn't a God of a first and a
22 second chance, none of us would be here. So I praise God
23 that if he is a God of another chance. So we are asking you,
24 please give him a chance. He need to be in his children's
25 life, raise those kids.

1 I'm a spiritual man. I believe in the Holy Bible,
2 this Bible right here that sits here, and God is a God of
3 love. Any time you do something -- and God says that if you
4 ask for forgiveness, he will see your forgetfulness. So God
5 is a God of another chance, not a first, second, third and he
6 stops there.

7 I would love to see Marcus released. I've talked
8 with him. I seen him at the jail. He is a spiritual guy. I
9 have the spirit of God in me. And I'm not passing judgment
10 on no one else in here, but my spirit made contact with his
11 spirit. There is a change that happened with him in prison,
12 in jail. The Lord told me when I first -- when I got the
13 call that Marcus got arrested, the Lord said he allowed that
14 to happen to get Marcus attention, and God got his attention.
15 Isaiah 55:11 says, My word shall not return onto me void. If
16 God speak a thing it will come to pass, I grant you that.

17 And I look at Marcus, Marcus is looking -- he is
18 looking for hope. Let's give him hope. Let's not kill his
19 hope.

20 My father, I'm 48 years old, never been in my life.
21 When I saw him, he was a dead man in a casket this year,
22 March of this year, 79 years old. I never knew my father.
23 My mother raised us. She did the best she could. Christian
24 family. Sure, yes, I did the prodigal son, I was back and
25 forth, but the word of God says that train up a child in a

1 way that he should go, no agenda, when he is old, he will not
2 depart. God is not talking about your age because you've got
3 old people, when you are well seasoned, you are not going
4 anywhere. And the spirit of God made contact with Marcus, I
5 can tell you, and I know in just my word to you, I know there
6 is a change in this man without a shadow of doubt. God said
7 the other day, Joshua, call him Joshua. If you know the
8 story about Joshua, he took over after Moses. Marcus got
9 work to do in the streets. And I will do my best to keep him
10 by my side.

11 I'm a member of For Your Glory International
12 Ministries on Dorchester Road under Pastor Prophetess Mathina
13 Ashley (ph). And I told Marcus, I said when Marcus get out,
14 I would love Marcus to join my church, but -- you know, I
15 don't want to take him away from his other church, but it is
16 a decision he have to make.

17 God calling you Joshua. Joshua, you've got work to
18 do in the streets. You are working in jail. People got
19 saved and delivered through his voice because God used him.

20 Now, when God said Joshua, Moses had to let Joshua
21 take charge and Joshua led the people. Marcus has young men
22 to be led by him.

23 So we are asking you, please, please consider his
24 children. I saw my father as a dead man in the casket, 79
25 years old, never been in my life. Over the years, I used to

1 think about my father. Kids, I would see their parent come
2 to the school, my mother by herself. Sometimes she couldn't
3 come because she worked.

4 So please, we are not demanding, we are asking you,
5 set him free, please. He has work to do. That's what God
6 said. I don't know your faith, I don't know your level of
7 faith in God, but God called him Joshua.

8 THE COURT: Thank you. Thank you, Mr. Williams,
9 appreciate you coming.

10 Yes, Mr. Condon, next.

11 THE COURT: Could you state your name, please.

12 MS. JOHNSON: Yes, sir. Doris Johnson.

13 THE COURT: Yes, ma'am.

14 MS. JOHNSON: I'm here as a support system for the
15 Gibbs family and for Marcus. I have been in prison ministry
16 since 1986 and still today. Behind the walls, I had the
17 opportunity to perform Bible studies with Marcus within the
18 county jail while as a volunteer chaplain.

19 THE COURT: Thank you for doing that.

20 MS. JOHNSON: Thank you, sir.

21 And I've seen the change in working with him. I'm
22 asking today, Your Honor, not to -- I -- I know that sin has
23 consequences. I'm not asking you to overlook what he's done
24 wrong. We make decisions; we have to live by those
25 decisions. I'm simply asking for mercy, whatever that mercy

1 is for your part, sir. I'm not asking you not to do your
2 job; I'm asking you to do your job and I'm asking you for
3 mercy.

4 And thank you.

5 THE COURT: Well Ms. Johnson, thank you for coming.

6 MS. JOHNSON: Thank you, sir.

7 THE COURT: Could you state your name, please.

8 MS. HOLMES: Sharnay Holmes (ph) .

9 THE COURT: Yes, Ms. Holmes.

10 MS. HOLMES: Marcus is a friend of mine for about
11 seven years. And I just wanted to say that he's a good
12 person and he has impacted my life in more ways than one.
13 And like even at my lowest point, Marcus lifted me up. And
14 at times I wanted to give up, but it was Marcus who
15 encouraged me. And through all them the time -- like I know
16 Marcus. I went to college, I gave up, I start -- I just gave
17 up on life, but it was Marcus who encouraged me to go back to
18 get my undergraduate degree. And even after that, he still
19 encouraged me. Even in the midst of his troubles, Marcus
20 always encouraged me. He's always my voice of reasoning.
21 And to this day I can go to Marcus for anything, any of my
22 problems, and he's always my voice of reasoning. Marcus is a
23 good father. And in the community maybe he was alleged of
24 many things, but what people -- other people say about him,
25 that's a reputation. His character is none of that. That

1 don't define him. Marcus is a good person. And if he -- if
2 I'm only his friend and he's impacted my life in that way,
3 you have to imagine what impact he will have on his family.
4 And I just want you to have mercy on Marcus because he's a
5 good person, and everybody makes mistakes, nobody is perfect.
6 And I'm just asking you to have mercy on his sentencing.

7 THE COURT: Thank you so much.

8 MS. HOLMES: Because Marcus, if he gives up on
9 himself, it affects a lot of people.

10 THE COURT: Thank you.

11 Hello. Could you state your name, please.

12 MS. POINSETT: Sister Jane Poinsett.

13 THE COURT: Yes, Ms. Poinsett.

14 MS. POINSETT: Oh, Lord, our Lord, how excellent is
15 thy name in all the earth who set that glory above the
16 heavens. Give order to Your Honor, the Judge. Um, you look
17 like a christian. I was sitting back there -- and I was a
18 Sunday school teacher for over 40 something years. And I
19 usually go on the east side of Charleston and pick up 25 to
20 30 kids every Sunday morning. Every Sunday morning we walk
21 to church. We have like 25 children be walking with me to
22 the church on 230 Huger Street. And when we had a Bible
23 school, the Lord let me gather over 200 children, Judge, and
24 take them to the Bible school. And as many times -- numerous
25 times I went to see Marcus, and every time I would go to see

1 Marcus, he speak about God, he speak about love, he speak
2 about God. And he -- he talks about the scriptures. And
3 Marcus is a -- he really is a good person. He really has
4 changed. You know, God has changed him in the prison. And
5 like I say that, you know, we had prisons way back in, you
6 know, 2,000 years ago when Christ was -- you know, they had
7 prison. So we consider that to know what he did probably he
8 would have to be sentenced, but we are asking you today just
9 consider him, Judge. And I know you -- you look like a good
10 person to me, you really do. And please consider him. He
11 has the nine children, and, you know, they are children who
12 really want to see their father. So consider him, Judge, and
13 we thank you very much.

14 THE COURT: Thank you, Ms. Poinsett. I appreciate
15 you coming.

16 THE COURT: If you could state your name, please.

17 MS. DOUGLAS: Jaquetta Douglas.

18 THE COURT: Yes, Ms. Douglas.

19 MS. DOUGLAS: I'm Marcus sister, there is five of
20 us, and I'm the second to the oldest.

21 And my brother, Marcus, he's a very good person.
22 My -- I always remember my parents always said to all of us
23 as the five of us to stick together. When one hurt, all
24 hurt. Your Honor, back in 1998, a leg fell out of that
25 chair, we lose a brother in 1998. We all went through that

1 together. We all hurt behind that.

2 And Your Honor, if you took my brother away from me,
3 oh, Lord, I just, I know we will hurt, and it will be like
4 losing another brother.

5 Marcus has nine kids, and he was in each one of
6 their life. He was a good father. He might wasn't there all
7 the time financially, but he played a part in each one of his
8 kids' life.

9 And I just want you to have mercy upon him. He's --
10 he calls me every night. He does Bible study in jail. He --
11 as a matter of fact, he had four guys who came out of prison
12 and called me looking for a church, they call them Pastor
13 Marcus Gibbs. And Your Honor, you can ask him anything about
14 the Bible and he will tell you exactly where to find it.

15 And Your Honor, please have mercy upon him. I thank
16 you.

17 THE COURT: Ms. Douglas, thank you for coming.

18 Yes, ma'am, if you could state your name?

19 MS. GRANVILLE: My name is Shawanda Granville and
20 I'm five -- I'm the mother of five of his children.

21 THE COURT: Okay.

22 MS. GRANVILLE: I'm here today to ask for your
23 consideration, ask for you to allow God to touch your heart
24 not only for Marcus but for -- and his family, but for his
25 children. Excuse me.

1 THE COURT: Take your time.

2 MS. GRANVILLE: His children love him. It's hard
3 for us. It's hard for them and it's hard for me to comfort
4 them, to explain to them if their father is coming home.
5 They love the ground that he walks on. We may have gone
6 through our changes. He made mistakes, I made mistakes, but
7 in order for us to -- we have to learn from our mistakes and
8 move on and do better. I have two boys from him. They need
9 him. They need his guidance so that they won't be in this
10 chair. My girls need him so that they wouldn't -- they can
11 have a male figure to guide them also in making decisions on
12 anything, really, because that's what he does now. When we
13 talk to him, we pray, he calls them, we put the phone on
14 speaker and we pray together, and they look forward to that.

15 I've -- by talking to him since this situation has
16 happened, I saw -- you know, I saw a change in him. Not only
17 was he a good father now, he's a great father. I mean,
18 sometimes he got to get me straight and remind me that I have
19 to get on my knees and pray because it's not easy for me
20 raising five kids by myself. I never would imagine my kids
21 being without their father, having them -- even if we were
22 not together, just having him, going on weekends with him,
23 going on trips with him, just having their father to hug and
24 help them get well if they are sick or whatever the case is.

25 But I'm asking for your consideration. I'm just

1 asking for God to take control and for you to allow God to
2 use you and open up your heart and have consideration for the
3 fact that he has kids, he has goals, he has dreams to go out
4 and touch boys, youth, you know. He been through a lot, he
5 been through -- he's going through a lot. And if he come out
6 this, he can touch young males out there so that they
7 wouldn't be in this position, not only his children, but
8 other guys or young boys that's getting into the wrong crowd
9 or whatever it is, youth development. And also leading
10 God -- leading everyone to God.

11 When I fall short sometimes he calls and he tells me
12 to pray and he tells me. It's going to be all right, just
13 leave it in God's hands, when I feel like just giving up.
14 But I know I cannot give up because I have those five kids.
15 And if his kids don't have him -- they need me, but at the
16 same time they listen to him, they look up to him, they love
17 the ground that he walks on. And for them to lose that, I
18 just ask God that you -- that -- I just ask you that you open
19 up your heart and allow him to be in his children's life.

20 THE COURT: Thank you, Ms. Granville.

21 MS. GRANVILLE: Thank you.

22 THE COURT: Could you state your name, please,
23 ma'am?

24 MS. GIBBS: Yes. My name is Keisha Gibbs and I am
25 Marcus sibling.

1 Like my sister stated, there was five of us and now
2 there is four. In the range of our ages, my two older
3 sisters, this was a gap of five years between us. And
4 Marcus -- my brother Zekial who has passed away, we are like
5 the other set closer in age. So of course I love my brother
6 dearly. And Your Honor, I don't want to lose him.

7 And I do have a lot of respect for the court system,
8 but I feel that it's just so unfair and unjust for someone's
9 life to be taken away on someone else's word. I sat through
10 the court hearing, I listened to everything the prosecutor
11 said, I have read a lot of the transcripts, the telephone
12 calls, the wiretaps that they have done, and Your Honor, I
13 found, what, two or three of the wiretaps, I look at the
14 situation on how they stated that Marcus was under
15 surveillance for two years but no pictures, no telephone
16 calls. So it's kind of unbelievable that his life is in
17 someone's hand on what someone else who is sitting behind
18 bars are saying about him. We all know the situation of
19 that.

20 Marcus is a very kind hearted person. Marcus will
21 give you your last -- Marcus will do anything for you, if you
22 are in need, just ask. Like his kids' mother said, it
23 doesn't matter who you are, if he can help you, he will help.
24 That's just the person that he is. In my daily walk, I've
25 come across people all the time who would say, Oh, you look

1 like Marcus and I was like, Yes, that's my brother. They
2 said, That one, he has a heart of gold. He's always believed
3 in doing for the communities and helping out. He created a
4 softball team to try to get things going back in the
5 communities because the kids are just falling by the wayside.
6 We know what the gadgets and the TVs and things of that
7 nature, the kids are just being -- going to the street. I'm
8 not saying he's perfect because none of us are, but I know
9 one thing, Lord knows he deserves another chance.

10 Thank you.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am. Could you state your name, please?

13 MS. GIBBS: My name is Kathleen Wade Gibbs.

14 THE COURT: Thank you, Ms. Gibbs.

15 MS. GIBBS: I was the mother of five children.

16 Well anyhow, Marcus was supposed to be here. I had four
17 kids, one normal, the rest was a C-section. And I think when
18 I got pregnant with Marcus -- God knows that he was going to
19 take Ezekiel Junior at an early age in 1998, and then in 2001
20 my husband.

21 First I want to say that when Marcus from baby, my
22 husband took all five of them with me to Sunday school and
23 church. When he was three years old, he used to go to
24 church, listen to the minister, and when he come home, he'll
25 get a five gallon can, stand up on it and preach to his

1 cousins. When they said, Oh, we ain't coming today, we are
2 going to play. So he said, Okay, he'll get the dog, tie him
3 to the tree and get the cat and put him in a little box and
4 he preach to the cat and the dog. And he -- Marcus, he's a
5 loving person. I mean, he really, just a kind person, look
6 out for people and everything. And even if I'm hurt, he's
7 there to comfort me.

8 In 2001 when my husband took sick, he was the first
9 one got there when he find out. My husband, he picked him
10 up, carried him like a baby to the bathroom. He bathed him
11 and everything. And in 2001 my husband died. He was in one
12 room and I was -- we had -- well, we was taking turns, each
13 one of us had like four hours to sit with my husband. And he
14 jumped up, Well, mommy, I forgot that it's your time to be
15 relieved and when he said that I said, Okay. I said,
16 Marcus -- he said, We have to turn dad. So I pulled him to
17 me and he put the pillow behind him and my husband neck just
18 fell to the side. And he's like, Oh, mama, daddy gone. So
19 you go in the room, I'll handle this. So he called hospice
20 and he told them that his dad had passed, and I see that it
21 hurt him. He say, Oh, Lord, he say, you left me here with
22 five children -- I mean four -- three sisters. And I said,
23 How am I going to do it with these girls? And I said, Oh,
24 Lord, help me, help me, and he was there right by my side to
25 make the arrangements and everything.

1 And Marcus, you know, I'm not saying he is perfect,
2 but he is not what they say about him in the paper. I'm
3 not -- I'm not saying that he's did no wrong, but he was, um,
4 my baby -- he's the baby. And he was, I went to see him at
5 the jail and I have to go in for a knee operation because all
6 my cartilage is gone in my knee, but I was taking a lot of
7 pain. So I tried to -- I said, Okay, go ahead. And he said,
8 Okay, I've got to teach Bible class. So I try to wait until
9 he gone so he wouldn't see me hopping. And he stand in the
10 corner and then he called my daughter and say, How y'all
11 don't tell me mommy hopping on her leg like that? I don't
12 want no grans going over there to mommy now, y'all take care
13 of your own grans. So I'm saying, Lord, when I go to get my
14 operation, who am I going to have to lean on? There is no
15 more man in my house. Marcus is the only man I got left.

16 And there is a part in the Bible that says, when
17 Jesus was on that cross, he said, Mother, behold thy son,
18 son, behold their mother. So I'm looking for he to hold me.
19 I'm 69 years old. If my son go to life, I wouldn't be here
20 when he come back. Even if my son get 20, 10 years, I'll be
21 an old lady. I supposed to be having my cane today, but my
22 granddaughter put it somewhere I couldn't find it. I said,
23 Lord, give me strength to climb those stairs and come.

24 So I'm asking you to have mercy on my son and please
25 don't take my last son from my arms, the last man in my life.

1 I thank you and God bless.

2 THE COURT: Thank you, Ms. Gibbs.

3 Hello. Could you state your name, please?

4 MS. GIBBS: My name is Toneshia Gibbs, I'm the niece
5 of Marcus Gibbs.

6 THE COURT: Yes, ma'am.

7 MS. GIBBS: I want to say he's an uncle but I also
8 take him as a father. He has been there plenty of times,
9 there is things I go to him about that I can't go to anyone
10 else. Even through jail, he changed the life of my boyfriend
11 as well. We would go see him. We would go visit him. You
12 know, he taught us about God. He taught us -- he got us
13 through a lot of things. And now my boyfriend, he never had
14 a job, he always was in trouble in school, and you know, have
15 a record, and is now on probation. But now he has a job, we
16 go to church on Sundays, we work through any problems.
17 Anything I ever need I would come to him for because he
18 always have the -- and he never just take my side, he would
19 also tell me the truth. He was always there for me as a
20 child. And he is just one of the best persons in my life
21 because he brought me through a lot. He taught me a lot.
22 And words just can't explain how much he means to me as a
23 person, as an uncle, and I look at him as a father, as well.
24 You know, he would call me whenever I'm down even though he
25 is in the position where he's in jail and I would hate to go

1 to him with my burdens, but he just brought me to the light
2 and showed me how to handle everything. He showed me how to
3 handle myself as a woman. I would have been astray as a
4 child if it wasn't for him. He guided me through life. He
5 would guide, talk with me, you know, as far as his girls, as
6 far as his sons, and I take them as sisters and brothers
7 myself. But he's just a very good person. Words just can't
8 explain how much he made a big change in my life and to
9 others. I have friends who I took down there to see him. He
10 changed the life of a lot of young guys. I know guys from
11 school who was incarcerated with him that is now walking
12 around going to church, is now on the right path. It's
13 just -- he's a very -- he's a christian man and he knows a
14 lot. He knows more than me. And I'm surprised of how much
15 change that he -- that a lot of young guys, including my
16 boyfriend, and he got our life together. He got my life
17 together and he was a big part of my life. He's a very good
18 person.

19 THE COURT: Thank you very much.

20 MS. GIBBS: Thank you.

21 MR. WILLIAMS: The Lord say accept the assignment.
22 Joshua, young men need to hear you. Young men need to hear
23 him. America, jails are filled with young people. When they
24 go in prison, either they become a Christian or a Muslim. I
25 have been in Islam for 10 years. And when God brought me

1 out -- I went in in '96, came out in 2006. I say, Lord, I
2 wasted 10 years. You know what God said? He said, No, you
3 didn't. He said you know them, you go win them. See, what
4 God is saying, if the majority are Christian, true Christians
5 can rise up how Muslim believe in the Koran and Prophet
6 Muhammad, it would be a different world. We must show love.
7 God showed me three major events that's going to take place
8 before Christ come. America brace yourself.

9 THE COURT: Thank you, Mr. Williams.

10 MR. WILLIAMS: Please, he has work to do.

11 THE COURT: Thank you, sir.

12 MR. WILLIAMS: Accept your assignment, go to work.

13 MR. CONDON: Your Honor, I do have a letter from
14 Marcus's son Darius that was September 11th, 2012. He
15 couldn't be here, so I was going to read it.

16 THE COURT: Please proceed.

17 MR. CONDON: "To whom it may concern, my name is
18 Darius Lanes Senior, and I am Marcus Gibbs's senior oldest
19 son. Just wanted to write this letter before you decide to
20 condemn him to a sentence. My father has always been a part
21 of my life. Actually, he took me to live with him and my
22 grandparents when I was five months old due to mother was
23 unable to financially provide my needs. I had a lot of good
24 times with my father and he stored good moral values in me.
25 He is a loving and caring person who does everything he can

1 for everyone that he knows regardless of his relationship
2 with that person. If he can help you, he will no matter what
3 the costs or consequence. In fact, if there were more people
4 like him, it would make the world a little better. Even
5 though he's not perfect, he tried his best to be. I am one
6 of nine, and every time I talk to the other eight children,
7 eight of his children, the only thing they say about him is
8 that they miss him and love him very much. The thing about it
9 is that not only his kids feel that way, but everyone is
10 feeling the same way.

11 "As I said before, he may not be perfect, but I feel
12 like we all have missed him for too long already. Please let
13 him come home soon. I have love to be there" -- "I would
14 have loved to be there but due to my commitment to the United
15 States Army I will not be able to attend the sentencing
16 hearing.

17 Sincerely, Darius Lane."

18 THE COURT: Thank you very much. Mr. Condon, any
19 other -- anyone else you would like to speak?

20 MR. CONDON: Mr. Gibbs did want to address the
21 Court.

22 THE COURT: I welcome to hear from Mr. Gibbs.

23 Mr. Gibbs, I like your family.

24 THE DEFENDANT: I love them. They are all right.

25 First of all, I would like to apologize for the

1 inconvenience we had a little while ago. It is an emotional
2 time and I'm sorry for that.

3 My name Marcus Gibbs. Ain't nobody know Marcus
4 Gibbs better than Marcus Gibbs. Yeah, I do some good things,
5 and I'll go all out for my family. You know, when I was
6 little, there was about 58 of us grans and first cousins. My
7 grandma and granddaddy had 11 kids, and they all had Gibbs
8 last name and it was, don't mess with the Gibbs. And I was
9 about the youngest before some other ones came on, and they
10 was like kind of older than me. So, you know, I get in
11 trouble because I know they are coming around and help me
12 out.

13 But I just want to say that I ain't perfect, and I
14 did some things that I got to be accountable for. I did some
15 things that, you know, it's not what they say I did, but I
16 did some things. I did some things. I'm going to fight --
17 I'm going to fight every day of my life to get back to my
18 children. I love my children more than anything. I look
19 at -- I look at Shawanda and I laugh because she, you know,
20 we have been through some things and she used my kids to get
21 at me, and I always go right back, because that's my kid.
22 That was my red flag right there. I threatened to take the
23 kids, I'm going back home.

24 But when I was out there doing bad, Your Honor, I
25 did do good. I helped the community. I gave to the church.

1 They -- I gave money to the church through my company,
2 through my property, I run real estate company. I gave money
3 to the church. Um, there was cashiers check receipts and
4 evidence of these that I did. And I'm not soliciting God's
5 word, I'm looking for to use God as a token advice, but I
6 came up here to just speak the truth.

7 Where they are trying to put me at, Your Honor, that
8 ain't me. I did things but I ain't did all those things that
9 they said I did. I'm -- in this conspiracy that they put me
10 in, don't know none of these people but one person, and that
11 was Ernest Chaplin. And I only know him because one of my
12 friend's is his sisters -- is, um, my friend baby mama.
13 Never had no dealing with these people, never had no dealings
14 really with these people. I'm at the bottom of the
15 Indictment, but they are trying to make me the head of
16 everything. They are trying to tell you that me, a man with
17 eleventh grade education, a GED, um, one year electrician
18 school, they are trying to say that -- don't even know how to
19 speak Spanish, that I controlled all these people, all these
20 Spanish people. These people are walking off with 10 years,
21 eight years, seven years, they are trying to get me life. Do
22 you think that's fair? I mean, it ain't fair, and you've got
23 to stand up for your responsibility because in the Bible
24 John -- Galations 6:70 said, Be not mocked, for God is not to
25 be mocked. You are going to reap what you sow. You are

1 going to sow what you reap. It says that plain and clearly.

2 When I came in here, I didn't even put my trust in a
3 man, through the whole trial I should of speak up then, but I
4 was saying, God going to work it out, whatever God got for me
5 is going to happen.

6 So whatever you decide to do today, I know that it's
7 not you, it's God, because I believe that God moves in
8 everybody. When we look at Romans 8:28, All things that work
9 for the good of those who love God are called according to
10 his purpose. All right, when you think about that, they say
11 for the good of those who love God, but it's not your good,
12 it's for God's good. If I loved God, then if God got
13 something for me to do, and maybe he got a prison ministry to
14 do, maybe he got something for me to do up the road, maybe he
15 got some people for me to touch, whatever he got for me to do
16 I'm going to have to do. So I know it's not you that is
17 rendering this verdict on me. I know it's not that the
18 prosecutor can say, I know there is nothing that my lawyer
19 couldn't do that would have changed up what God had planned
20 for me.

21 Now, the only thing I ask you to have consideration
22 is my children. They love me; I love them. It's going to be
23 a lot of wet eyes tonight, but we've got to own up to our
24 responsibilities sometime, someplace. Maybe if somebody had
25 turned me around and kicked me a long time ago, things would

1 have been different. But we've got to own up to our
2 responsibility. And I don't want to be taken out of my
3 children's life for a long process of time. I won't be able
4 to -- if you can talk to any of my kids, they will tell you
5 who their daddy is. They will tell you all the things that
6 their daddy did with them. They will tell you how their
7 daddy has been there and everything. They will tell you all
8 these stuff. But, you know, like I said, we've got to reap
9 what we sow. I just won't be able to still be a part of
10 their life.

11 Even if you decide to do what the prosecutor wants
12 you to do, then I know that, you know, Philippians 4:13 said
13 We can do all things through Christ. So I know that Christ
14 has got me. I know he'll make a way. I have been -- I used
15 to take care of my children out there the best way I could.
16 Now if all these stuff that they say I did, over 500 kilos or
17 something, or whatever that, then my mama's house would have
18 been paid off. My sister wouldn't be living in an apartment.
19 My sister's house wouldn't have just -- she wouldn't have
20 just got help with her foreclosure -- no foreclosure had been
21 at her house. My baby mama wouldn't be on Section 8. My --
22 all these people -- all of my baby mamas wouldn't be going
23 through financial trouble right now, from Florida all the way
24 down to -- you know, I did what I did to an extent, not
25 to what all they say that I did.

1 I just ask you, if you are a praying man, pray on
2 it. Ask God what you should do. I'm not looking for a walk
3 out of here, you know, thing, but I don't know what God got
4 for me, I just looking for some compassion, some mercy.

5 If you look at everything -- you see, the things
6 that they don't talk about is that, all right, I got a
7 record, but a lot of things that I didn't do that I just been
8 at the wrong place at the wrong time. I'm a friend type of
9 friend. If my friend calls and they need me I'm going to try
10 to be there. If I ain't never gave a ride, I would have never
11 been here. They -- if you look at everything they had, they
12 ain't never had no -- they said they had some -- they knew of
13 me since 2002, 2004, Detective Rod said, DEA Rod said. They
14 ain't got a picture of me, you ain't got a thing. Am I that
15 high up that you can't -- you can't even see me, that you
16 can't investigate me? And through the whole case you say
17 that you had -- I was the man, um, the person that you was
18 going after. You couldn't have buy/busted me if I was doing
19 the things that y'all said I was doing. Y'all could have
20 sent anybody at me if that was the case.

21 But like I say, Your Honor, I'm not here to go
22 through all the stuff that happened, but I just want to point
23 out some things, how I became the head of this stuff. I
24 became -- I got black people working for me and I got
25 Mexicans, Spanish people working for me, working under me,

1 not their cousins, not their brothers, not the Mexican
2 cousins, brothers or nothing, but I got them working for me.
3 I can't even -- I can't even get -- I can't even get a, um,
4 what you call the stuff? A passport. I never been out of
5 this country. I have been to Boston, back down here. I have
6 been to Florida. I have gone to Walt Disney with my
7 children, thank God for that, before I come in here. But I
8 ain't never been out of this country. I don't even know how
9 to speak Spanish. They said a lot of lies. They said I
10 been -- I been in Mexican prison. I ain't never been in
11 prison down here when this happened.

12 I -- I always had God to bless. So the things
13 that -- you know, sometimes you get through with things and
14 then God allows you to come back someplace down the line.
15 And I chalk it up. I say, you know, for all the things I
16 got, then this is the things I'm going to have to go through
17 right now. This is the things I'm going to have to go with.
18 My children still going to be blessed. I'm still going to be
19 able to call them, talk to them on the phone. God will make
20 a way for them to come see me, come up. I'll be able to hold
21 them. I ain't dead, that's one thing that I thank God for,
22 I'm not dead. They -- you know, a lot of people can't say
23 that. A lot of people can't say that.

24 When I came in here, I used to tell my family
25 Proverbs 21, he said that The king's heart is in the palms of

1 his hand. He turned -- like the water flow, he turned to
2 whatever way he wants to.

3 So like I said then, don't beat yourself up about
4 nothing. You only can do what God wants you to do. So let
5 God flow through you. Let God do what he want to do through
6 you.

7 I thank you for letting me talk.

8 THE COURT: Mr. Gibbs, thank you, sir.

9 MR. CONDON: Your Honor, I do have -- I've got a
10 statement from Pastor Theodosis Jordan (ph). I would like to
11 pass it up.

12 THE COURT: I'll be glad to receive it.

13 MR. CONDON: I would read it, but it's pretty
14 detailed.

15 THE COURT: Okay. Mark this as an exhibit, please.
16 Thank you.

17 (Pause in proceedings.)

18 THE COURT: I've read it. Yes, Mr. Condon?

19 MR. CONDON: Your Honor, that would be our -- other
20 than additional argument, that would be our witnesses with
21 regard to our motion for --

22 THE COURT: I think we've about covered most of the
23 courtroom here. I've enjoyed every one of them, frankly.

24 MR. CONDON: Make sure I got everybody who wants to
25 speak.

1 THE COURT: Thank you.

2 Mr. Phillips, from the Government.

3 MR. PHILLIPS: Yes, Your Honor.

4 Before I go into my remarks, my argument is going to
5 be addressing the appropriate life sentence potentially, but
6 also recognizing the Court has the discretion to go below
7 that. So, you know, all these things I'll be talking about,
8 you know, are pertinent obviously to anywhere you may go
9 below that if you choose to. So again, that's where we are
10 starting from because that's where the Guidelines through
11 the --

12 THE COURT: I take it the Government's view is that
13 I should impose life?

14 MR. PHILLIPS: Your Honor -- well, I'll get to
15 that.

16 THE COURT: Okay. You know, I told Mr. Gibbs to say
17 yes or no earlier, so why don't you answer that question yes
18 or no.

19 MR. PHILLIPS: Well, it -- if I can have time to
20 set it out, I would like to explain.

21 THE COURT: Go ahead. I'm giving you a little bit
22 of a hard time.

23 MR. PHILLIPS: Because this is not easy. I know
24 it's not easy for you.

25 THE COURT: It's not easy for me.

1 MR. PHILLIPS: And I'll tell the family and
2 Mr. Gibbs and anyone that knows me, the agents that work with
3 me know that any time someone is going to prison, you know,
4 it's not easy. It's not easy.

5 THE COURT: You know Mr. Phillips, Mr. Gibbs has got
6 up and said, I've done wrong, I should be held accountable.

7 MR. PHILLIPS: So there is no question life is
8 harsh. Mr. Condon used the word harsh and there is no
9 question. And there is no question that -- therefore, there
10 is no question whether that's sufficient, clearly it would be
11 sufficient, it's the highest sentence you could give.

12 And of course as you've noted and pointed out, the
13 question is whether it's greater than necessary, and my
14 comments will sort of -- will discuss that from the
15 Government's perspective.

16 And as I said, this isn't easy. It's never easy for
17 anyone because any sentence punishes not only Mr. Gibbs, but
18 as I've heard Judge Duffy, who I had the honor to work for,
19 said many a time in sentencing that he sentences not only the
20 defendant but the entire family, the nine children and all
21 the family members and friends that have talked today. And
22 that's a hard thing. And you've heard from them today. And
23 Mr. Gibbs has more going for him than sometimes sadly a lot
24 of defendants that come to court have, probably the majority
25 of sentencing there will be a defendant by themselves with

1 no family facing, you know, harsh sentences, but no family
2 that shows up. So he has that going for him.

3 THE COURT: He has a wonderful family.

4 MR. PHILLIPS: Yeah, and I recognize that, from our
5 perspective. And you heard from them today, as you should,
6 but I'm here to speak for those that aren't here today, Your
7 Honor, and I say this with no --

8 THE COURT: I mean, you know, Mr. Phillips, you are
9 about to get into this, I'm concerned about all those
10 children in those neighborhoods who are being polluted by
11 these drugs and the destruction of their lives, and I worry
12 about them. You know, and there are tremendous consequences
13 associated with drug dealing. And, you know, I think there
14 is -- it's appropriate that we consider the impact on the
15 community, the good with the bad. I think it's great that
16 Mr. Gibbs tithes to his church, that's a great thing, but was
17 that the proceeds of drug money and a great deal of suffering
18 and bad that went to produce that? So we've got to weigh all
19 of this.

20 MR. PHILLIPS: Yes, sir.

21 And I say these things with no hint of irony or
22 sarcasm, I mean, I truly believe it, I mean, I am here to
23 represent the people. I wish we did it like New York where
24 they say that the people, the State of New York as opposed to
25 the way we do it saying the Government, but I say these

1 things just to give some context of things. I mean, of
2 course it is the Government for the people by the people, of
3 the people, and the Government's here for those folks that
4 aren't here today.

5 You know, one of the -- one of the ministers that
6 spoke talked about another chance for Mr. Gibbs. And
7 certainly that's something the Court should consider, but as
8 a spokesperson for the people and all people, and that would
9 be my only comment to Mr. Cohen's comments, and that is that
10 I represent, we represent, the folks on my table, and I'm
11 confident and I wholeheartedly believe that we represent all
12 the people. We didn't choose Mr. Gibbs for any other reason
13 other than what the evidence told us, and not for his race or
14 anything else.

15 THE COURT: Actually, this conspiracy was sort of an
16 equal opportunity employer.

17 MR. PHILLIPS: It was.

18 And I would -- if someone were to look at my
19 indictment record, I think I'm an equal opportunity
20 prosecutor, as well. So I wanted to say that, but I'll leave
21 that for something else.

22 But the chances -- what are the chances for those
23 nameless and faceless victims, you know, the addicts who have
24 made their choice to use these drugs, but they had children,
25 too, and they were affected by it. And you've already

1 touched on that, but it is something that I think we have to
2 say every time and we need to mention that, to the victims of
3 the violence of the drug trade. And in my brief I talked
4 about, we are not talking about the victims in our community.
5 There is the drug dealers themselves that are killing each
6 other. And we are not saying -- and again, another thing
7 that I'll put in this box, there is no allegation that he was
8 directly involved in any violence.

9 THE COURT: You know, I've got to say that one thing
10 I noted, I mean, you know, there was an appropriate
11 enhancement because he possessed the gun, but -- and he had a
12 prior history as a young man of having crimes of violence --
13 but there is no evidence -- and I listened very closely
14 during the trial of this -- that he was running a network of
15 terror or anything like that. That, you know, one normally
16 thinks about major drug trafficking operations having a
17 healthy dose of violence as part of it. And, you know, we
18 just didn't see that regarding Mr. Gibbs in regard to the
19 conspiracy that you put up at trial.

20 MR. PHILLIPS: Yes, sir. And I agree with that,
21 any direct evidence of his direct involvement. But what we
22 do have is evidence of large scale drug trafficking in that I
23 think it's --

24 THE COURT: Large may be an understatement.

25 MR. PHILLIPS: And it's appropriate for the Court

1 to consider, but although there is no evidence tying directly
2 anything, certainly the Court can consider, when you take
3 this stuff in and put it out, that certainly that's the
4 consequence, that those are going to be the consequences. We
5 are not talking about -- we are talking about drugs and
6 cocaine and that's turned into crack and cocaine that's
7 abused, and all those things. And it stretches from our
8 community all the way back to Mexico. And people supplying
9 it to Mr. Gibbs, you don't have to look very far to see the
10 violence and what that has waged on that country. So there
11 is an accountability, we believe, and a responsibility to
12 hold him accountable for what he put out there.

13 THE COURT: And appropriately the Guidelines are
14 very high --

15 MR. PHILLIPS: Yes, sir.

16 THE COURT: -- in recognition of that.

17 MR. PHILLIPS: Yes, sir.

18 And so some of my comments are going to focus -- I'm
19 not going to spend too much time, it's clear everyone --
20 well, we agree on the seriousness of the offense, and I think
21 our brief addresses that I think adequately, and I'll leave
22 it at that because I don't want to beat a dead horse.

23 What I'm going to do now, though, is sort of respond
24 to some of the other things that have been raised and talk
25 about, you know, what the overwhelming evidence did show and

1 some of these questions that were raised. You know, there
2 was a question raised about where is the money? And as you
3 correctly noted, we certainly would like to know where the
4 money we believe was gained in these illegal activities is.
5 And sometimes we get it; sometimes we don't. But it's not as
6 simple as saying, Oh, this is ludicrous, because if I had 500
7 kilos all these people would be living the high life; I would
8 be living the high life.

9 First of all, a smart drug dealer isn't going to
10 live the high life to too much of an extent to bring
11 attention to themselves.

12 Second of all, 500 kilos, he didn't make a net
13 profit on that. They cost 28, 30,000 per, and he would make
14 2 to 4, you know, just based on our experience. So that is
15 still a significant amount of money, 500, if you are making
16 2,000 per kilo would be about a million dollars, but that's
17 over a period of time. And you've heard about nine children
18 which I'm sure he's provided for. He has a very expensive
19 pickup truck, Mercedes, BMW, was renting a house which was
20 not a cheap house, attorneys, paying for attorneys during the
21 course of this conspiracy. So that money can go pretty
22 quick. And I just point that out because I just don't think
23 that is a starter to suggest that his involvement was less
24 than what it was.

25 And when Mr. Gibbs spoke -- and this goes to my

1 concerns about deterrence and things along that line -- of
2 course he doesn't have to admit anything and he has admitted
3 that he did wrong and that was a step that I didn't expect,
4 and it's the first time we've heard it. And it's saying the
5 right thing. And I hope -- I hope he means it and I hope he
6 believes it.

7 THE COURT: It seemed to me he meant it.

8 MR. PHILLIPS: And it did. I couldn't see him
9 saying it in his eyes, but it sounded like he did. And so
10 he's saying some of the right things, but then he goes on to
11 denying dealing with any of these folks. And that gets us
12 back to these concerns, you know, he denies -- we have him
13 intercepted with speaking to Pedro Ochoa. We have text
14 messages with Nene.

15 THE COURT: He's got Timothy Maldonado's gun.

16 MR. PHILLIPS: Maldonado's gun and Waiters in the
17 car. So it stretches credibility to say, I had nothing to do
18 with these folks or any dealings.

19 THE COURT: Mr. Phillips, I hear what he's saying
20 is, is that, okay -- I don't want to put words in his mouth
21 because he was careful not to go any further than he needed
22 to and I respected that under these circumstances -- but he
23 was basically saying, okay, I was involved in some of this, I
24 just wasn't as big a cheese as the Government made me out to
25 be. That's fine for him to take that view.

1 MR. PHILLIPS: I understand.

2 THE COURT: He may be bigger than he appreciated he
3 was frankly.

4 MR. PHILLIPS: But I think it's fine for him to
5 take that view, but you can certainly consider that in --

6 THE COURT: He's not --

7 MR. PHILLIPS: -- in light of the evidence.

8 THE COURT: He's not getting acceptance of
9 responsibility or anything, so it doesn't matter.

10 MR. PHILLIPS: I think that's an appropriate factor
11 to determine significant deterrence to him. And the only
12 other things I wanted to note, he's got the enhancement for
13 the obstruction, but those are the actions not of someone who
14 is trying to get Mr. Waiters to take it through his attorney,
15 and his objections Dalarna Nelson's name has been, maybe they
16 were her drugs, which again stretches credibility. I mean,
17 that's a bit --

18 THE COURT: Let me say this --

19 MR. PHILLIPS: -- that's tough.

20 THE COURT: His counsel making suggestions like
21 that, he's got to defend his client. I didn't hear Mr. Gibbs
22 get on the stand and blame Ms. Nelson --

23 MR. PHILLIPS: Okay.

24 THE COURT: -- get up here today at sentencing and
25 blame Ms. Nelson.

1 MR. PHILLIPS: One other thing I wanted to point
2 out, we never alleged he went to Mexico. He didn't have to
3 go to Mexico; Mexico came to him.

4 THE COURT: He did go to Atlanta, we know that.

5 MR. PHILLIPS: Atlanta.

6 And if I remember correctly, it's -- there was a lot
7 of information in the case -- but there was some meetings in
8 Charleston, as well, but early on. And we didn't -- we
9 didn't allege that he was organizing or dictating anything to
10 the Mexicans. I mean, clearly their part of the pie they
11 were in control of, but he was in charge of folks here,
12 and --

13 THE COURT: Read the ledger sheet.

14 MR. PHILLIPS: Yes, and recruiting distributors and
15 the like. And that's the basis of that. And I don't want
16 any confusion over that.

17 So briefly going through what Mr. Condon has argued
18 in his brief, some of the issues, he cites the 21 years for
19 the killer in Norway, I would just ask --

20 THE COURT: Don't waste your time.

21 MR. PHILLIPS: That's -- that's a nonstarter,
22 that's something completely different and a whole different
23 system.

24 You know, there has been mention of what other
25 codefendants have gotten and the disparities between

1 codefendants. Well, those other codefendants, none that have
2 been sentenced, were at the level that the evidence showed
3 Mr. Gibbs was. So that's issue number one that's not in
4 disparity.

5 THE COURT: A number of them had 5K's.

6 MR. PHILLIPS: And that was the next. They all
7 pled guilty, so some of them got a reduction just for
8 acceptance of responsibility, and many of them cooperated and
9 received consideration for their cooperation. So you can't
10 really compare them. You know, the only person at this point
11 who got convicted, I think at a similar level would be --
12 Pedro Ochoa has not been sentenced yet, I believe he's facing
13 approximately around 28 years under his Guidelines, but of
14 course he cooperated and you heard him testify, so he's in a
15 different situation, as well. And they were at a similar
16 level.

17 But what I -- to go to the seriousness of the
18 offense and go to Mr. Gibbs's role particularly, I would
19 submit that Ochoa and Gibbs are at a similar level, but there
20 are distinct differences between them. They were moving
21 similar amounts of weight, but Ochoa, to just make sure it's
22 clear for the Court, was still a middleman in many ways. And
23 as a cell leader, a Mexican cell leader, I've seen these
24 cases develop, he was a person that had command and control
25 of Mexico and was distributing to mid-level and local

1 distributors here, and he was taking his orders from
2 elsewhere.

3 Mr. Gibbs, the evidence showed, cut out that
4 middleman. And whereas Ochoa had his Nene that he answered
5 to, Mr. Gibbs was in partnership with Nene. And the only
6 answering he had to do was if they lost a load and he owed
7 money in debts and things. It was more of a business
8 relationship. And that would be another explanation where
9 some of the money went. I'm sure they lost loads. I'm sure
10 that people got arrested and he didn't get all his money. So
11 you are supposed to make a million dollars profit, but the
12 drug business has a lot of loss where you have to --

13 THE COURT: You are always buying the next load.

14 MR. PHILLIPS: Exactly.

15 So even then I would put Ochoa at a rung below where
16 Mr. Gibbs was, certainly Nene, some of these higher people
17 that currently are, we believe in another country, are above
18 Mr. Gibbs. They were a source of supply and they would
19 warrant, you know, consideration if you are slotting people
20 where they go. So I think that's important to note. We note
21 that in our brief. And that, again, I believe puts him more
22 directly accountable for what happens in Mexico as a result
23 of this drug trade, and for what happened in this community
24 as far as the amount of drugs that he pumped into this
25 community. And so there is no question that that factor

1 warrants a substantial sentence.

2 As far as the general deterrence, and general
3 deterrence for the -- as we note in our brief and we tell you
4 from experience, there are not many Marcus Gibbs at any given
5 time in Charleston. When he's arrested, when anyone at a
6 similar level is arrested, we always learn that it does make
7 an impact. It's a temporary impact, unfortunately, but it
8 does make an impact on the drug market in Charleston. When
9 individuals at his level go away, we always get reports later
10 on that there was a drought in this time of 2010, and you can
11 tie it directly to folks of his stature being taken off. So
12 there are only a few of those folks at a time, and there is
13 certainly a need, but unfortunately, we take them off; more
14 fill in. So we need that general deterrence. And a
15 significant sentence in this case is necessary for that
16 general deterrence.

17 THE COURT: Well, Mr. Phillips, I've read your
18 brief, and I don't think that you are going to have trouble
19 persuading the Court that a significant sentence is required.
20 The question is: How significant a sentence?

21 MR. PHILLIPS: Yes, sir.

22 THE COURT: And I've read -- I mean, you can go
23 through all these -- all the factors under 3553, and I'm not
24 going to have any quarrel with you, the question is: How
25 significant -- you know, we need to deter. We need to

1 protect the public, but life versus something less than life.

2 MR. PHILLIPS: Yes, sir.

3 THE COURT: How does it address accomplishing the
4 goal of imposing a sentence which is sufficient but not
5 greater than necessary --

6 MR. PHILLIPS: Yes, sir, and --

7 THE COURT: -- to accomplish the purposes.

8 MR. PHILLIPS: I have been working to that. And
9 that's why I asked for time. Because as I said, this is -- I
10 take my duty as a prosecutor -- and I'll tell anyone that
11 listens -- that had a piece of evidence indicated that we
12 were completely wrong, I would have been the first to dismiss
13 the case and bring it to the Court's attention. And one can
14 believe that or disbelieve that, but I can say that with a
15 clear conscience and heart. So we take the evidence as it
16 comes. And in part, I have been working through that as I
17 have been talking, that very question. And I know it's not
18 for lack of preparation; it's for the difficult issues that
19 we have before us.

20 Your Honor, but I went through those issues and I
21 wanted to hit those factors because we still have to support
22 whatever sentence is given, and I wanted to give the Court
23 the Government's perspective and the support for that.

24 In this prosecutor's opinion, the factors under
25 3553, while under the Guidelines, I think the Guidelines are

1 appropriate, I think that there are circumstances where life
2 would be appropriate for this case under these facts for this
3 defendant and what we know, I think in looking at what the
4 Guidelines would have been had a couple of things gone a
5 different way, I think 360 months would be appropriate, Your
6 Honor. That's 30 years, which is still significant given his
7 age, and I'm sure Mr. Condon would argue that that is a life
8 sentence, but it gives hope that he can get out. If he does
9 good time and does whatever else, that he has a chance to --
10 his children obviously are young -- he can spend time with
11 his children. It's certainly better than life.

12 And I do so, again, there is other prosecutors,
13 there is other cases down the line, solely based on the facts
14 of this case. There may be a situation very similar to
15 Mr. Gibbs in the future, but we would argue, or I would argue
16 life would be appropriate, but given his lack of evidence --

17 THE COURT: My obligation is to take one case at a
18 time.

19 MR. PHILLIPS: Yes, sir, and as is ours. But I
20 just -- you know, I don't represent me, again, I represent --
21 the things that I do can affect others, so I do it with that
22 caveat. But, you know, given his lack of direct involvement,
23 though he did have the guns, and you have -- you know, a lot
24 of times folks dealing in the amount he did need guns for
25 protection, and there is certainly the risk of violence.

1 That I think is encapsulated in a sentence of 30 years.

2 I will tell you I don't believe -- and I didn't come
3 to that conclusion lightly or a long time ago, in some ways I
4 came to that conclusion as I have been talking here. And
5 again, that's not for lack of preparation, it's because, I'm
6 sure as you have in this situation, you've probably gone back
7 and forth.

8 THE COURT: The one thing I do is I come to the
9 hearing to hear the evidence and you heard the evidence from
10 the family for the first time yourself.

11 MR. PHILLIPS: Yes, sir.

12 THE COURT: And you know, I come with an open mind
13 to hear all the evidence.

14 MR. PHILLIPS: And I do that, but it's -- I mean,
15 it's firm in that concession, if you would, from the
16 Guideline range. You know, I firmly believe and I'm solid in
17 my belief that a day less than 30 years wouldn't be
18 appropriate when you consider the Guideline range, but it
19 does give hope, it does sufficiently address the 3553
20 factors, and it doesn't do so greater than necessary for the
21 reasons that I've spent the last however long talking about.
22 Because it -- it's still a significant case. And as you
23 said, we've heard from the family, which is a good family, it
24 sounds to be, but we didn't hear from all these other
25 families. So I think on their behalf a sentence of 30 years,

1 given his involvement, would be appropriate in this case,
2 Your Honor.

3 THE COURT: Thank you very much.

4 Mr. Condon, anything in reply?

5 MR. CONDON: Your Honor, obviously a 10-year
6 sentence would be severe in this case. Mr. Gibbs is 40 years
7 old. You know, when they did all these wiretaps, there was
8 only a tangential number of wiretaps, you know, or phone
9 calls dealing with Mr. Gibbs. And I just want to bring that
10 out because just to show that there just a tangential
11 connection with regard to the Mexican situation. But 10
12 years he would -- he's 40 years old, he would be 50. I think
13 the thing that people forget about is that supervised
14 release, there is -- that in itself you can hang an
15 additional time over his head, 10 years or more with regard
16 to supervised release so that in effect he's in custody for
17 20 years. He's being accounted for during that supervised
18 release time. So I think, you know, 10 years deterrence,
19 protection of the public gives hope in terms of
20 rehabilitation. It does meet the factors of 3553(a). I
21 think that that -- that's why it was important about the
22 mandatory minimum. It makes a big difference when you start
23 thinking about, you know, that 10 years would be an
24 appropriate sentence; whereas before, you know, the 20 years
25 would be basically almost a life sentence for someone of his

1 age. But I think it gives him hope, gives him a chance to
2 rehabilitate himself. That's what I think you saw today, him
3 accepting responsibility. He's got a loving family around
4 him. And also, it's amazing how much he affected people
5 while incarcerated. They come to him for help and advice and
6 he's touched their lives.

7 THE COURT: I don't have much doubt about what I've
8 heard about Mr. Gibbs, that he is going to be having a prison
9 ministry wherever he is, and you never know what your calling
10 is going to be and where you are going to touch people. And
11 maybe there is no group of people more needy of the insights
12 he might be able to offer than right there in prison.

13 MR. CONDON: Well, I think as we learned it, you
14 know, today, when you are faced with your responsibility, you
15 take up your task and your job wherever you are. But I think
16 10 years is very appropriate in this case. I think that
17 there is no evidence of violence. There is, you know, a
18 situation where you have a tangential connection based on
19 these wiretaps. I think 10 years would be a significant
20 sentence and this would accomplish all the goals of 3553(a).

21 MR. PHILLIPS: Judge, if I may briefly respond?

22 I think from life to 10 is -- because in some
23 respects the things that I've listed in the brief, the things
24 I've talked about today, the things that we've talked about
25 under 3553, and I think the Guidelines are dead on in this

1 case, that he deserves life for what he's done. But then the
2 question is not that, it's whether the factors and the things
3 that you are supposed to consider can be accomplished with
4 something less than that.

5 And so I urge the Court to, when thinking, when
6 listening to the argument to go from life to 10 years, that's
7 what we are talking about, we are not talking -- this isn't a
8 negotiation of 30 to 10 --

9 THE COURT: Mr. Phillips, Mr. Condon is just doing
10 his job.

11 MR. PHILLIPS: I understand, but from the
12 Government's --

13 THE COURT: He's arguing on behalf of his client and
14 he's doing exactly the argument I expected him to make and
15 you are doing the argument I expect you to make. So focus on
16 the merits.

17 MR. PHILLIPS: Yes, sir. Well, but I just want to
18 give it the proper context, talking about from life to 10, I
19 think that would be grossly unjust. And again, when we --
20 when I came to -- very rarely do I say an amount, but when I
21 say 30 years, that's, I'm looking at Guidelines. If you took
22 some of the enhancements away, had he won some of those, he
23 would be at 360 to life with the drug weight or close to
24 that. And really in my view, the amount of drugs that he put
25 into the community, if you just look at that Guideline range

1 where he would be, he would either be 360 to life or 324 to
2 410.

3 THE COURT: Yeah. 38, with a Criminal History of V,
4 he's 360 to life without any enhancements.

5 MR. PHILLIPS: That's -- I didn't pull that out of
6 an old cloth, that's sort of why it came to me that that
7 might be an appropriate sentence because you just can't
8 ignore that part of the seriousness of the offense. But it's
9 not a situation where I think a day less than 30 years given
10 the seriousness of the offense would be appropriate under
11 3553.

12 MR. CONDON: Your Honor, I just want to again --

13 THE COURT: You want to get the last word.

14 MR. CONDON: And I think Mr. Gibbs wants to address
15 me.

16 THE COURT: I'll be glad to hear from him again.

17 MR. CONDON: You know, I did do some research on
18 variances and the Courts have become more amenable, obviously
19 since the -- since the Guidelines have been advisory, but I
20 came across a case out of the Eighth Circuit, *United States*
21 vs. *Feaster* (ph) where there was a 360 guideline range and it
22 went down to the mandatory minimum 10 years in that case.

23 So I mean what I'm saying is, is that there is
24 flexibility in the system, there is discretion in the system
25 that wasn't there before, and I think in this situation a

1 mandatory minimum of 10 years would be appropriate. And I
2 know Mr. Gibbs did want to --

3 THE COURT: I'll be glad to hear another word from
4 Mr. Gibbs, yes.

5 THE DEFENDANT: Your Honor, truthfully, I don't want
6 no time, but you know --

7 THE COURT: I would expect nothing else.

8 THE DEFENDANT: I want time served truthfully. But
9 if I had to get time with the Guideline, the statutory, I
10 would love to have the 10 years. And like I say, if Your
11 Honor do something good, you can hold supervision release
12 over my head, you can hold 20 years, you can make a
13 stipulation that if I get in anything after I'm released,
14 that I got to serve the whole 20 years. You can do this
15 thing because you are the Judge.

16 But I want you to look at something else. When I
17 did get locked up, when I went into Leeds Avenue, if you take
18 the time, you call Chaplin Smith, you call the discipline
19 board, they will tell you that Mr. Gibbs ain't -- he was in
20 there, he was doing -- he was -- if you could be a good
21 samaritan and inside the devil's playground, if you can be
22 inspiration to somebody inside the devil's playground, but
23 Mr. Gibbs sign up for DAODAS and graduated.

24 I understand that the things that we do in our
25 community affects other people. You know, coming through

1 life, people didn't realize -- well, I'm talking about me, I
2 didn't realize some of the situations that I put myself in,
3 some of the things that I did affected other people. If I go
4 to the club and I fight, um, I affected the people who was at
5 the club, the owner of the club, um, the patrons at the club,
6 I affected the person who got to go home bruised up, or I go
7 home bruised up, if I go to the doctor, it affects everybody,
8 it affects other people, that's where we learn in the victim
9 crime impact class. You know, they only give you three days,
10 it wasn't nothing that they -- I went to learn. I went to
11 try it. I know there is programs up in the penitentiary and
12 I'm going to get in these programs. I'm going to try to get
13 in these stuff. I'm going to try to better myself. I'm
14 going to try to take a chance that God given me that I didn't
15 take back then. I'm going to try to educate myself and try
16 to get a trade.

17 And people took -- my family loved me. When I told
18 my sister I wanted a property management company, I was going
19 to try to -- I was going to Atlanta, Shawanda in Atlanta with
20 my children, so I ran behind her. I was going up to Atlanta.
21 And I got into this property -- I got with my uncle and we
22 started doing this property manager. I talked to my sister
23 and she lent me \$10,000 to get into this program. She went
24 in her bank account and drafted me \$10,000 to get in this
25 stuff, to buy foreclosures houses and stuff. There was

1 houses, there was condominiums in Atlanta going for \$710,000,
2 condominiums that -- homes would have been worth 135, 150
3 something. But right then Atlanta was doing bad on their
4 economy, real bad, and the houses was little or nothing.

5 So we got up there and we got a couple of houses.
6 We was going through -- well, I don't even know if this is
7 legal, but I don't know if this is legal or illegal, but we
8 was going through people, and people who got houses and
9 they -- they -- we will get the houses from them, we'll take
10 over their houses and have them sign over the bill of sale,
11 take over the houses and take over their loan and pay on
12 these houses and pay up a couple of years and got the equity.
13 This is the stuff that my uncle teach me in the business
14 world because he was manager of a bank and he knew these
15 stuff.

16 So I want to learn. Maybe this is the break that I
17 needed. I'm going to miss my children regardless of what you
18 do, but I know I've got to do something to pay back to this
19 community. But I ask you if you gave me -- if you throw
20 yourself on the mercy of the Court, I throw myself on the
21 mercy of the Court, ask you if you could just give me the 10
22 years and put a bunch of probation over my head when I do get
23 out. Then if I do go down the wrong road, then I'll be back
24 where I supposed to be at. But I don't believe this is where
25 I'm supposed to be at. I believe that I did things and I

1 believe that I done got to the age that I'm ready to settle
2 down. I'm ready to do the opposite. Fall in the crowd
3 sometimes and, you know, our community, the way that we was
4 brought up, the things we see on TV, fall in these stuff.
5 You know, I don't want to blame the rap and all that, but the
6 things we see, the cars, the good life, the lavish life, you
7 know, we see we try to mimic. But now that I know these
8 different things, now that I know my Lord, I know Christ
9 Jesus, I've got a different aspect. Maybe it's too late, but
10 regardless of what you do to me today, I can -- I'm
11 strengthened through him. He's not gone. Sometimes he just
12 don't take you away from the problem, sometimes he take you
13 through the problem. You know, God put into a firey furnace.
14 God didn't deliver them from the firey furnace, he went into
15 the firey furnace with them. He went into the lion's den
16 with Daniel. You know, he didn't even deliver his own son
17 when he cried out to him on the cross. So I mean, sometimes
18 you just got to go through things.

19 But I ask you if you just take the time, you can
20 call the jail, ask for the -- see what I did when I been in
21 there. See all the things I did. See how I carried myself.
22 I know we are accountable for things we do, but Your Honor, I
23 just ask you, you know, for the sake of my family, for my
24 children, 10 years and a lot of probation, that will be
25 reasonable. Put a stipulation on me.

I know the rapper T.I. he had to do things for the community. He had to go talk to younger people. He had to give back to the community. You know, these are the things that instead of a harsh sentence that you all can put on people, that you can use a person like me to give back, to tell youngsters, listen, man, I did this here. I went this life. I fall in the fast life. It ain't get me no place but away from my children, crying at night -- see people -- people hear these fantastic stories like, um, you know, like the ghetto superstar and stuff like that with these stories. These stuff that they do, you hear the good side, you hear about the money, you hear about the cars, but they don't hear about the part where you are in jail and you are away from your loved ones, you are crying at night and you can't get a phone call through. You've got people who is trying to come at you the wrong way when you are trying to do good. Because when you are in jail and you are trying to do good, man, there is some of the people who are going to try to take that good as a weakness. So you don't hear about all that stuff.

You know, I always been the type of person who -- I used to look out for people, but these last year, things change. I'm the one that who got to be humbled. I've got people coming at me because I carry myself as a man of God, and I've got to be humble because I've got to represent me and God. I've got to teach things. Somebody takes up with

1 me, I've got to tell them, well, you know, you've got to
2 handle that. So I mean, yeah, I probably need -- I know I
3 need this here, I know I need some time. I know I can take
4 advantage of the situation. But I ask of you not to be
5 rational -- not rational, I'm not asking you to be extensive
6 with the time, I'm asking you to just think about it. You
7 know, like I said before, pray on it, and you know, I accept
8 whatever you give me. I've got to.

9 I thank you.

10 THE COURT: Thank you, Mr. Gibbs.

11 Anything further, Mr. Condon?

12 MR. CONDON: Your Honor, obviously when you impose
13 time, if you could recommend any drug program that he may be
14 eligible for, as well as an institution in South Carolina.

15 THE COURT: I was going to ask you about that
16 because I know that the family is going to want to visit.

17 MR. CONDON: Yes, sir.

18 THE COURT: Of course I don't control the Bureau of
19 Prisons on either of those matters, but I can make a
20 recommendation and I certainly intend to do that.

21 MR. CONDON: Yes, sir. And I did want to make this
22 letter of March 23rd, 2012 a part of the record.

23 THE COURT: Please. If you will give it to Ms.
24 Ravenel, she'll mark it.

25 THE CLERK: Court Exhibit Number 2.

1 THE COURT: Well, I have the unenviable role of
2 deciding sentencing here. And I don't think any judge
3 relishes sentencing, the sentencing role, but it's part of
4 our responsibility and I intend to do it and follow the law
5 as Congress has provided to me and our court precedents have
6 provided.

7 I will make some general statements. I'm going to
8 then pronounce sentence and then I'm going to state a fuller
9 justification for the sentence in the record.

10 The Guideline sentence for Mr. Gibbs, of course, is
11 life. He is at a level 46 and up through -- the top of the
12 chart is 43, it's life across the board thereafter. And if I
13 were simply to follow the Guidelines, it would be life. In
14 fact, I would need to depart downward four levels just to get
15 to 360 under the Sentencing Guidelines.

16 I've studied with a considerable amount of care the
17 specific methods by which the Guidelines got us to 46. And
18 the reason we can vary and seek to impose a sentence which is
19 reasonable, which is sufficient and not greater than
20 necessary, is that sometimes you just can't put all life's
21 experiences on a grid and get the right answer. It's a good
22 place to start, we've started there, but I think life is too
23 much here. I just think it's too much.

24 And the question then is, what's the appropriate
25 sentence? And I have been very impressed with the family and

1 friends and the defendant's prison ministries activities, all
2 of that is interesting and important and it is part of the
3 reason that I am prepared to vary from life because I think
4 he should have hope and I think we all should have hope that
5 there is a better course.

6 But I equally have a concern about the impact of
7 what he's done on the community. And Mr. Gibbs made
8 reference of his having greater insight into that. What is
9 going on with the distribution of drugs in our community and
10 its impact on young people is heartbreaking. And Mr. Gibbs,
11 if you had asked, if he had thought about the impact of what
12 he was doing and the way it injured his community, I'm sure
13 in reflection he never would have done it because it affects
14 and it injured people just like his nine children. And
15 that's the thing that is so tragic.

16 So part of what I have to look at is to make sure
17 that we deter this type of conduct. That people who look to
18 say, I want to be like a drug dealer say, well, you know,
19 there needs to be a significant punishment associated with
20 this so that that is not a path people would want to follow.

21 I need to impose a sentence that promotes respect
22 for the law, provides just punishment, provides an adequate
23 deterrence and protects the public. So I've got to weigh all
24 of these different factors and I think that it is necessary
25 that a significant sentence be imposed for what was done,

1 what was proven, what I'm satisfied was criminal conduct in
2 which the defendant was involved, and it needs to be balanced
3 by mercy and by imposing a sentence which is sufficient but
4 not greater than necessary to impose -- to affect the
5 purposes of the act.

6 So with that I'm going to pronounce the sentence and
7 then I'm going to give a greater statement to justify my
8 variance under 3553.

9 Having calculated and considered the advisory
10 Sentencing Guidelines and having also considered the relevant
11 statutory sentencing factors contained in 18, USC, Section
12 3553(a), it is the judgment of the Court that the defendant,
13 Marcus D. Gibbs, is hereby committed to the custody of the
14 Bureau of Prisons to be imprisoned for a total of 360 months.

15 Such term consists of 360 months as to Counts 1, 4
16 and 5, 240 months as to Count 3 and 120 months as to Count 6.
17 Said terms to run concurrently.

18 It does not appear that the defendant has the
19 ability to pay a fine; therefore, a fine is waived.

20 The defendant shall pay the mandatory \$500 special
21 assessment fee.

22 Upon release from imprisonment, the defendant shall
23 be placed on supervised release for the term of life. Such
24 terms consisting of life as to Counts 1, 4 and 5 and three
25 years as to Counts 3 and 6. Said terms to run concurrently.

1 Within 72 hours of release from the custody of the
2 Bureau of Prisons, the defendant shall report in person to
3 the probation office in the district to which the defendant
4 is released.

5 While on supervised release, the defendant shall
6 comply with the mandatory and standard conditions of
7 supervision outlined in 18, USC, Section 3583(d). The
8 defendant shall also comply with the following special
9 conditions:

10 Number one, the defendant shall submit to substance
11 abuse testing and/or treatment as approved by the United
12 States probation officer until such time as the defendant is
13 released from the program by the probation officer.

14 Number 2, the defendant shall provide the United
15 States probation officer access to any and all requested
16 financial information including, but not limited to, income
17 tax returns.

18 I recommend that the defendant be admitted to a drug
19 treatment program.

20 I further recommend that his incarceration, if
21 possible, be in an institution in South Carolina or as close
22 as possible to South Carolina to allow his family ease of
23 access for visitation.

24 Now, I want to address, if I might, the basis of my
25 variance from the life sentence down four levels in the chart

1 to a sentence of 360 years -- 360 months.

2 I start with the statement that my obligation is to
3 impose a sentence which is sufficient but not greater than
4 necessary to comply with the purposes of the act. This must
5 be done on an individualized basis. I have considered all
6 the factors under 3553(a) including and given special weight
7 to each of these factors. I've considered the nature and
8 circumstances of the offense. This was a major drug
9 trafficking operation and I think it did immense injury to
10 the community, and there is overwhelming evidence to support
11 that Mr. Gibbs was an organizer and a leader of a major drug
12 trafficking operation.

13 I've considered the history and characteristics of
14 the defendant, his long history of criminal activity, his
15 level V Criminal History out of a total possibility of VI,
16 that obviously weighed heavily, as well.

17 I've considered the seriousness of the offense. I
18 think it's beyond dispute this is a serious offense. I
19 believe someone who is engaged in such a major drug
20 trafficking operation, it's necessary to impose a significant
21 sentence to promote respect for the law, provide just
22 punishment, provide an adequate deterrence to protect the
23 public. Saying that, I do not believe it is necessary to
24 impose life to accomplish those purposes and I believe a
25 sentence of 360 months accomplishes those ends.

1 Now, let me provide Mr. Gibbs a notice of his appeal
2 rights. Mr. Gibbs, you can appeal your conviction if you
3 believe your guilty plea was somehow unlawful -- or I'm
4 sorry -- you can appeal your conviction if you believe
5 somehow your trial was -- there was an error or a violation
6 of your legal rights. You also have a right to appeal your
7 sentence under certain circumstances, particularly if you
8 believe the sentence is contrary to law. You must file the
9 appeal within 14 days of the entry of judgment.

10 Further, you have a right to file in forma pauperis
11 and the Clerk of Court will prepare a notice of appeal on
12 your behalf.

13 Mr. Condon, are there further matters to come before
14 the Court at this time?

15 MR. CONDON: Um, no, Your Honor. I think what I
16 would do, I'll file a Notice of Appeal, but I think it be
17 best to appoint someone else to represent.

18 THE COURT: I'll allow -- you know, they can -- that
19 matter can be addressed later in terms of the handling of
20 Mr. Gibbs's appeal. But I, you know, you may want to do what
21 you can in terms of making a motion to withdraw or whatever
22 and see about the appointment of other counsel.

23 I will say, Mr. Condon, I thought you did an
24 excellent job regarding the sentencing hearing, and I think
25 even Mr. Gibbs after watching the whole thing came to

1 appreciate the effort and the diligence to which you have
2 engaged in this. I mean, this is probably a sentence that no
3 one is really happy with, but I must say to you that had I
4 simply followed the Guidelines, he would have served life.
5 He would have left at the time of his death and we did not do
6 that. And I think that there was the argument made to
7 support the variance here of four levels, which is not an
8 insignificant variance because, among other things, the
9 excellent argument made by counsel.

10 Mr. Phillips, anything further from the Government?

11 MR. PHILLIPS: Judge, just one issue and just for
12 the record to be clean because I'm sure this will be
13 appealed, I want to make sure there is no confusion that when
14 you went from -- when you didn't consider the enhancement,
15 Count 4 -- and you just didn't mention this before, and I
16 just didn't want anyone to think that you may have felt
17 constrained one way or the other -- Count 4 statutory
18 penalties were five, minimum of five and a max of 40 for
19 Count 4. I know it has no bearing on --

20 THE COURT: I appreciate you -- I'm fully aware of
21 that. I simply did the ones that were, you know, the range
22 was 10 to life for me and based on all of the convictions and
23 all the counts. I appreciate you mentioning that.

24 Anything else? Very good. Court is adjourned.

25

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2 I certify that the foregoing is a correct transcript from the
3 record of proceedings in the above-titled matter.

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9 Amy C. Diaz, RPR, CRR

September 28, 2012

10 S/ Amy Diaz

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